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how to ... Corporation law

OHIO CORPORATIONS

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AS AUTHORIZED BY THE OLD AND NEW CONSTITUTIONS AND
REGULATED BY STATUTE, WITH NOTES OF OHIO DECISIONS
AND A COMPLETE MANUAL OF

FORMS

FOR ORGANIZING AND MANAGING

All kinds of Companies and Associations

BY

A. T. BREWER AND G. A. LAUBSCHER

FOURTH EDITION

THOROUGHLY REVISED AND ENLARGED



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CINCINNATI
THE ROBERT CLARKE COMPANY

1900

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PREFACE TO FOURTH EDITION.

The large numbers of corporations constantly formed in Ohio make the question of corporate existence, management, rights and liabilities of increasing importance to attorneys, officers and persons interested as stockholders and creditors.

To such this book offers ready access to the two thousand sections of the statutes and nearly one thousand decisions of Ohio courts relating to corporations. It collects the constitutional and statutory provisions to date, with a reference to such further sections of the statutes as are of incidental interest, though applicable to individuals as well.

Much care has been taken to make the notes terse but accurate digests of the points decided. The subsequent history of decisions of courts below the supreme court cannot always be traced, but all references in the third edition have been examined, and traced when possible and changes made when necessary.

Realizing that the want of a thorough index detracts from the value of many books, the index has been made unusually exhaustive, both in topical and analytical arrangement, and it is hoped that every point in the statutes and decisions can be readily found. The references to the notes are printed in italics.

The forms comprise all such as are likely to be needed in organizing and managing corporations both for profit and not for profit, including proceedings for converting surplus into additional stock or issuing non-taxable certificates therefor. Many have already been adopted by the secretary of state, whose books are printed to fit them, and they are, therefore, practically official.

Much credit is due the publishers for the excellent mechanical

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appearance of the book. The new, clear type used, with heavy black face catch words, and annotations directly following the section considered, leave nothing in this direction to be desired.

A. T. BREWER,

G. A. LAUBSCHER.

Cleveland, September 20, 1900.

ABBREVIATIONS USED.

B.	Weekly Law Bulletin.
C. C.	Ohio Circuit Court Reports.
C. P.	Common Pleas Court.
N. P.	Nisi Prius Reports.
O.	Ohio Reports.
O. S.	Ohio State Reports.
S. C.	Supreme Court.
S. C. C.	Superior Court of Cincinnati.

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OHIO CORPORATIONS.

PROVISIONS OF CONSTITUTION OF 1802.

The provision in the Constitution of 1802 relating to corporations is the following:

Art. VIII, Sec. 27. Incorporation of literary societies—

That every association of persons, when regularly formed, within this state, and having given themselves a name, may, on application to the legislature, be entitled to receive letters of incorporation, to enable them to hold estates, real and personal, for the support of their schools, academies, colleges, universities, and for other purposes. [Bill of Rights.]

PROVISIONS OF CONSTITUTION OF 1851.

Art. VIII, Sec. 4. Credit of state—The state shall not become joint owner or stockholder—

The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

Sec. 5. No assumption of debts by state—

The state shall never assume the debts of any county, city, town, or township, or of any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the state in war.

Sec. 6. Counties not authorized to become stockholders, etc.—

The general assembly shall never authorize any county, city, town, or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or associa-

(1)

tion whatever; or to raise money for, or loan its credit to, or in aid of, any such company, corporation, or association.

Art. XIII, Sec. 1. Corporate powers—

The general assembly shall pass no special act conferring corporate powers.

Under the constitution of 1802, the legislature had power to grant special charters creating corporations for all purposes for which corporations can now be formed. Many such charters were granted, and the companies created thereby existed September 1, 1851, when the new constitution went into effect. Most of the charters were perpetual, though some were for a term of years. These old constitution charters were not affected by Art. XIII, sec. 1, of the new constitution. *Citizens' Bank v. Wright*, 6 Ohio St. 318; *State v. Roosa*, 11 Ohio St. 16-25; *State v. Union Tp.*, 8 Ohio St. 394-400.

In most old charters there is no provision of forfeiture by reason of any violation of the charter, or failure, or neglect of the incorporators or their successors. In such cases the charter can only be forfeited by a judicial decree. The existence of the company cannot be collaterally inquired into. *Receivers v. Renick*, 15 Ohio, 322; *State v. Bryce*, 7 Ohio, 83 (pt. 2); *Webb v. Moler*, 8 Ohio, 548.

Where a corporation has abused its corporate powers, but not so as to create a ground of forfeiture expressly provided by statute, the supreme court has discretion, under sec. 6780, to oust or not, as justice may require. *State v. Building Association*, 35 Ohio St. 258; *Finnell v. Burt*, 2 Handy, 202.

Decree of ouster is not retroactive. *Society Perun v. Cleveland*, 43 Ohio St. 481.

Corporation *de facto* cannot set up its lack of power where it has received the benefit of the transaction which it seeks to avoid. *Gaff v. Flesher*, 33 Ohio St. 107.

Corporation cannot be ousted of franchises which it has exercised twenty years or over. Sec. 6789; *State v. Miami Exporting Co.*, 11 Ohio, 126.

Provisions similar to those contained in sec. 6789 existed under the old constitution.

In *State of Ohio ex rel. Attorney-General v. The Seneca County Mutual Insurance Company*, decided June 17, 1891, by Ohio Supreme Court, it appeared that the defendant was chartered in 1850, suspended active business in 1870, and did not resume until 1889. The information was filed in the spring of 1890, when the company had 1,700 policies in force, and at the hearing, in June, 1891, it had 2,300 policies in force. It was sought to avoid the charter for non-user more than five years. The court refused to dissolve the company, notwithstanding the five-year limitation contained in sec. 6789, exercising discretion which the court had in such cases against the apparently mandatory language of the section, saying it would have been otherwise had the information been filed before the company resumed business. The case has not been reported.

See note to sec. 3654, *State v. Eagle Ins. Co.*

A corporation organized under a special statute for a certain number of years, but continuing to exercise its corporate powers thereafter, may still be treated as a corporation. *Myers v. Lucas*, 16 C. C. 545.

Legislature cannot confer corporate powers by special act; constitutionality of an act is determined by its operation, not by its form. *State v. Mitchell*, 31 Ohio St. 607.

But it may grant permission to surrender corporate powers. *Penn. & Ohio Canal Co. v. Commissioners*, 27 Ohio St. 14.

Sec. 2. Corporations, how formed—

Corporations may be formed under general laws, but all such laws may, from time to time, be altered or repealed.

Sec. 3. Dues, how secured—

Dues from corporations shall be secured, by such individual liability of the stockholders, and other means, as may be prescribed by law; but, in all cases, each stockholder shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum, at least equal in amount to such stock.

"Dues" includes a demand for unliquidated damages arising from a tort. *Rider v. Fritchey, Adm'r*, 49 Ohio St. 285.

Sec. 4. Property subject to taxation—

The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

Sec. 5. Right of way—

No right of way (1) shall be appropriated to the use of any corporation (2) until full compensation (3) therefor be first made in money, or first secured by a deposit of money, (4) to the owner, irrespective of any benefit (5) from any improvement proposed by such corporation; which compensation shall be ascertained by a jury of twelve men, in a court of record, (6) as shall be prescribed by law.

Sec. 7. Associations with banking powers—

No act of the general assembly, authorizing associations with banking powers, shall take effect until it shall be submitted to the people, at the general election next succeeding the passage

thereof, and be approved by a majority of all the electors voting at such election.

"Associations with banking powers" refers only to banks of issue. *Dearborn v. Northwestern Savings Bank*, 42 Ohio St. 617.

STATUTORY PROVISIONS.

Some sections of the Ohio statutes are applicable to partnerships and individuals as well as to corporations. These, with some others, relate rather to duties and liabilities of corporations than to their management and powers special to them; and being only incidentally of interest to corporations, are not printed herein. The following brief reference to such provisions may be of some value:

Sec. 61. Fixes time for making certain annual reports.

Secs. 1465-1, 2 and 3, 90 O. L. 218. Provide for erection of permanent buildings by township trustees in private cemetery grounds.

Secs. 1470-1 and 2, 73 O. L. 33. Provide for removal of bodies from discontinued cemetery, and sale of land.

Secs. 1470-3 to 5. Provide for removal of bodies from any cemetery.

Sec. 1473-1, 93 O. L. 153. Provides for transfer of cemetery by association to township trustees.

Sec. 2732-3, 93 O. L. 219. Exempts property belonging to incorporated posts and lodges from taxation.

Sec. 2744. Provides for returns for taxation by corporations generally.

See *Ins. Co. v. La Rue*, 22 Ohio St. 630; *Worthington v. Sebastian*, 25 Ohio St. 10. An owner in Ohio of stock in a foreign corporation must list same for taxation, although the capital is taxed in the foreign state, *Bradley v. Bauder*, 36 Ohio St. 28; even though foreign company has substantial property in Ohio on which it pays taxes here, and is formed by consolidation of Ohio railroad companies with companies of other states. *Lee, Treas., v. Sturges*, and *Ins. Co. v. Ratterman*, *Treas.*, 46 Ohio St. 153.

The capital stock of a company is included in this section, but is represented by whatever it is invested in. *Jones v. Davis*, 35 Ohio St. 474.

Re-insurance is not a debt to be deducted from claims due the companies. *Ins. Co. v. Cappellar*, 38 Ohio St. 560.

Tax returns of domestic insurance companies may be corrected throughout the current year, but not for former years; that power is conferred by sec. 2781. *Ohio Farmers' Ins. Co. v. Hard*, *Treas.*, 59 Ohio St. 248.

Sec. 2745. Provides for returns by agents of insurance companies, with revocation of license as penalty for violation.

The power to revoke or decline to renew license may be exercised notwithstanding commencement and pendency of an action against the company to recover the taxes assessed. *Ohio ex rel. v. Life Ins. Co.*, 58 Ohio St. 1.

As to taxes to be paid by foreign mutual life insurance company, see *State v. Hahn*, 50 Ohio St. 714. Injunction, not mandamus, is proper remedy to test the question and prevent superintendent of insurance from revoking license. *Id.*

See also notes to secs. 279 and 2744.

For further provision as to revocation of license for failure to make return, see act, sec. (2477-5), 92 O. L. 348.

Sec. 2745a. Provides that insurance policy on Ohio property shall not be placed in agency outside of state nor re-insured in unauthorized foreign company, etc.

Secs. 2745b, c and d. Provide for inspection of companies violating sec. 2745a, and revocation of license.

Sec. 2746. Provides that stock in companies making return of capital need not be listed by shareholder.

Certificates of preferred stock in railroad company under secs. 3307, 3308, 3309, need not be listed for taxation. *Miller, Ex'r, v. Ratterman, Treas.*, 47 Ohio St. 141.

See also notes to secs. 2744 and 2745; and as to taxing stock generally, see *Clev. Trust Co. v. Lander, Treas.*, 43 B. 297, affirming 19 C. C. 271, and *Adams v. Shields, Treas.*, 17 C. C. 129, affirmed in 42 B. 262.

Secs. 2759 and 2759a. Provide for annual statements by unincorporated banks.

Sec. 2759b. Makes sec. 2759 applicable to savings banks incorporated under act of April 16, 1867.

This act is constitutional. *Callett v. Savings Society*, 13 C. C. 131; affirmed, 37 B. 332.

Sec. 2762. Provides for listing shares of stock of incorporated banks and banking associations.

Sec. 2764. Provides that list of stockholders shall be kept for inspection of tax officials.

Sec. 2765. Provides for reports by cashier to auditor of county.

Sec. 2769. Provides for penalty on failure to comply with sec. 2765.

Sec. 2773. Provides for penalty if officers of railroad company fail to attend meeting of board of valuation, etc.

Sec. 2774. Provides for apportionment of valuation of railroad property among counties.

Railroad is subject to taxation under "one mile assessment pike" law, although no direct pecuniary benefit will accrue to it from proposed expenditure of funds so raised. *R. R. Co. v. Commissioners*, 48 Ohio St. 249.

Sec. 2777. Defines who shall be deemed an express, telegraph or telephone company.

The act of April 27, 1893 (90 O. L. 330), amending and supplementing secs. 2777 to 2780, is constitutional. *State v. Jones, Auditor*, 51 Ohio St. 492.

Sec. 2778. Provides for annual statement to auditor of state by companies included in sec. 2777.

Sec. 2778a. Provides for a state board of appraisers and assessors for property taxable under sec. 2777.

Sec. 2779. Provides for penalty and procedure in case of failure to file statements under sec. 2778.

Sec. 2780. Provides for duties and powers of board under sec. 2778a.

Secs. 2780-1 to 6, 91 O. L. 237. Define express companies, provide an excise tax and certain annual statements.

This act is valid. *Express Co. v. State*, 55 Ohio St. 69.

Secs. 2780-7 to 11, 92 O. L. 89. Define freight line and equipment companies, and provide for an excise tax and certain annual statements.

Secs. 2780-12 to 16, 91 O. L. 408. Define sleeping car companies, and provide for an excise tax and annual statements.

Secs. 2780-17 to 22, 92 O. L. 79. Define electric light, gas, natural gas, pipe line, water-works, street railroad, railroad, messenger or signal companies, and provide for an excise tax and annual statements.

Secs. 2839, 2840, 2841. Provide that bank shares shall not be transferred if taxes thereon unpaid; that bank may pay taxes and deduct from dividends, etc.

Sec. 2842. Provides that agent of express and telegraph companies shall pay taxes for companies.

Sec. 2843. Prohibits express, telegraph, telephone and insurance companies doing business if tax unpaid, etc.

Secs. 3107-42, 43. Empower associations organized as sol-

diers' memorial associations or cemetery corporations to acquire real estate necessary, which shall be exempt from taxation.

Secs. 3445-1 to 15, 92 O. L. 410. Provide for ship canal company, with powers.

Secs. 3471-4a and 5. Provide for contracts by electric light and water-works companies with municipalities.

Secs. 3471-6, 7 and 8. Provide for powers and authority in Cincinnati of companies for constructing conduits for electric wires, etc.

Secs. 3713-7 to 9. Prohibit trespasses upon fair and agricultural society grounds.

Secs. 3768-1 and 2. Provide that mechanics' institutes incorporated prior to 1851 may borrow money without personal liability by directors or trustees.

Secs. 3779-1 to 3. Provide for descent of lands held for religious purposes, in trust, etc.

Secs. 3796a to e, 77 O. L. 146. Empower secret benevolent associations to invest surplus funds, fix powers of trustees, receive donations, pay endowments not exceeding \$5,000, etc.

Secs. 3821-1 to 63. Define unauthorized banks, liability of stockholders, issue of bills, assets of expired and insolvent banking companies, etc.

For authority to lease Hocking canal land to Columbus, Hocking Valley & Athens R. R. Co., see 91 v. 327, 93 v. 216, 94 v. 236.

Secs. 4095 to 4105. Concern management and powers of Cincinnati and Toledo Universities.

Act, 88 O. L. 317. Grants right of way through Ohio State University grounds to Sandusky & Columbus, Lake Erie & Southern R. R. Co.

Secs. 4211-19 to 23. Prohibit transportation of cattle to prevent infection with "Texas fever."

Secs. 4364-63 and 64. Provided for payment of wages twice a month, etc.

Held unconstitutional in *State v. Lake Erie Iron Co.*, 25 B. 101, 33 B. 6.

Secs. 4364-65 and 66. Regulate employment of minors.

Sec. 4364-68. Joining labor organizations protected.

Secs. 4364-69 and 70. Provide for seats, closets, etc., for employes.

Secs. 4427-1 to 12. Prohibit combinations known as "trusts."
Held constitutional in 43 B. 149.

Act, 93 O. L. 10. Incorporates "The Evangelical Lutheran Synod of Ohio and other States."

Secs. 4748 and 4749. Provide for punishment of railroad company employe, etc., for obstructing road or highway.

Sec. 6881-1. Forbids trespass upon private property by employes of telephone and telegraph companies.

Secs. 6919 to 6926. Prohibit commission of nuisance by injurious trades, stagnant waters, depositing offal, emptying refuse, obstructing ditches, etc.

Sec. 6919. The judgment required by the statute, upon conviction for maintaining a nuisance, under the act of April 15, 1857, cannot be dispensed with upon a showing that the nuisance does not exist at the time of rendering the judgment. The order to abate does not issue as a matter of course. If the nuisance has ceased, the order will not issue. *Smith v. State*, 22 Ohio St. 539; *Matthews v. State*, 25 Ohio St. 536.

Sec. 6920. Inspectors to prosecute violations are provided for by the act of April 28, 1890, 87 O. L. 350.

Sec. 6921. As to what is a sufficient description of a highway, where it is obstructed, see *Matthews v. State*, 25 Ohio St. 536.

Cutting a tree and allowing it to remain in the road is a nuisance. *Nagle v. Brown*, 37 Ohio St. 7.

When a dam may be a nuisance. *Crawford v. Rambo*, 44 Ohio St. 279.

Sec. 6923. The owners along a natural stream, or sewer substituted for it, are under no obligation to repair it; their duty is only to omit injuring it. *Winslow v. Fuhrman*, 25 Ohio St. 639.

Sec. 6925. Where a mining company deposited slack and refuse on its own land, which was washed down upon lands of another, it is no defense to an action for damages that this was the general practice and was without malice, and that such deposits were made in the only feasible place. *Columbus, etc., Iron Co. v. Tucker*, 48 Ohio St. 41.

Sec. 6980. Provides for punishment of person in charge of railroad locomotive for crossing railroad crossing without previously stopping, receiving signal, etc.

Sec. 6980a. Restricts time for obstructing streets in Cincinnati and Springfield by railroad cars, etc.

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CREATION OF CORPORATIONS AND GENERAL PROVISIONS.

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§ 3232. By what laws governed—

Corporations created before the adoption of the present constitution, and which have not, by election or some other act, come

to be governed by laws since passed, shall be governed and controlled by the laws then in force, and the valid modifications thereof since or herein enacted; and other corporations, now existing or hereafter created, shall be governed and controlled by the provisions of this title.

Where charter provided manner in which it should be accepted, that mode should be followed. *Owen v. Purdy*, 12 Ohio St. 73. But where the corporation has exercised the powers, or enjoyed the privileges secured by the amendment, as against the claims of third persons, it is estopped. *Ib.*; *Goodin v. Evans*, 18 Ohio St. 150. But a non-assenting stockholder may deny that he assented, and invoke the aid of the state in a quo warranto, or the power of a court in an action in his own name. *Owen v. Purdy*, *supra*, and *State v. Cin. Gas Light & Coke Co.*, 18 Ohio St. 262.

Where a corporation, incorporated before adoption of constitution of 1851, claims to be exempt from legislative control, this fact can never be presumed, but must appear affirmatively by terms of the charter. *Gas Light Co. v. Zanesville*, 47 Ohio St. 35, affirming 1 C. C. 123. See also 47 Ohio St. 1.

§ 3233. What corporations may accept the provisions of this title—

A corporation created before the adoption of the present constitution, and now actually doing business, may accept any of the provisions of this title, and when a certified copy of such acceptance is filed with the secretary of state, so much of its charter as is inconsistent with the provisions of this title is hereby repealed. 50 v. 274, sec. 71; S. & C. 309.

It is not necessary that a certificate of the company's acceptance be filed with the secretary of state; it is the fact of acceptance which binds the company and works the amendment. *Railroad Co. v. Cole*, 29 Ohio St. 126.

§ 3233-1. Special charters not accepted or acted on, repealed—

All special acts of incorporation in force in this state, which have not been accepted or acted upon, shall be and the same are hereby repealed.

§ 3233-2. Duty of secretary of state if charter of religious society lost—Effect of charter—

Whenever it shall be made to appear to the satisfaction of the secretary of state that any religious society or corporation heretofore organized or incorporated under the laws of this state has lost its charter or certificate of incorporation, or that the same

has been destroyed, it shall be the duty of the secretary of state to issue a new certificate of incorporation of such religious society or corporation theretofore issued, and the time as near as may be ascertained of issuing such lost or destroyed certificate as shall be made to appear to him; and thereupon all deeds, mortgages, or other instruments of writing for the conveyance of land, as well as all acts done by such religious society or corporation by virtue of such certificate or charter theretofore lost, shall be binding and of full force in law and in equity; provided, that nothing in this act shall be so construed as to make valid any act not authorized under the laws of this state which heretofore have been in force. 75 O. L. 77.

§ 3233-3. Thirty years' exercise of corporate rights prima facie evidence of incorporation—

The fact that a religious society for not less than thirty years, claiming to have been duly and legally incorporated as such, and performing during such time duties and exercising rights as such, shall be prima facie evidence of the original issue of such charter or certificate of incorporation as claimed by such society. 75 O. L. 77.

§ 3234. Corporations created prior to 1851—Fire insurance companies—

Corporations created before the adoption of the present constitution, which take any action under or in pursuance of this title, shall thereby and thereafter be deemed to have consented, and shall be held to be a corporation, and to have and exercise all and singular its franchises under the present constitution and the laws passed in pursuance thereof, and not otherwise; provided, that any fire insurance company so created, complying with the requirements of sections three thousand six hundred and fifty-four and three thousand six hundred and fifty-five, or of any police regulation contained in chapter eleven of this title, or in chapter eight of title three, part first, shall not be deemed to have consented, and shall not be affected by the provisions of this section by reason of such compliance. 89 O. L. 74.

Where a corporation organized under the former constitution has repeatedly, since the adoption of the present constitution, changed the time and terms of election of directors, and has elected directors after giving public

notice, it is a corporation under the present constitution. *State v. Lakamp*, 4 C. C. 257.

See *Knox Co. Mut. Ins. Co. v. Bowersox, Receiver*, 6 C. C. 275.

**§ 3235. For what purposes corporations may be formed—
As to corporations dealing in real estate—**

Corporations may be formed in the manner provided in this chapter for any purpose for which individuals may lawfully associate themselves, except for carrying on professional business; but nothing in this section shall prevent the formation of corporations for the purpose of erecting, owning and conducting sanitariums for the receiving of and caring for patients and for the medical, surgical and hygienic treatment of the diseases of such patients, and for instruction of nurses in the treatment of disease and in hygiene; provided, that the articles of incorporation formed for the purpose of buying and selling real estate shall expire by limitation in twenty-five years from the date of being issued by the secretary of state. In case any real estate owned by any such incorporation is not sold or disposed of by any such corporation within twenty-four years from the date that their respective articles of incorporation are issued, it shall be forthwith the duty of the board of directors of such corporation to institute action against such corporation and owners of liens upon or against such real estate proposed to be sold, by filing a petition in the court of common pleas in the county wherein such real estate is situated, praying for a sale of the real estate in the petition described; and should any such board of directors refuse to direct any officer to institute action as hereinbefore mentioned, and should such action be not instituted within sixty days after the expiration of the twenty-four years hereinbefore mentioned, it shall be the duty of the prosecuting attorney of the county wherein such real estate is situated, upon the expiration of said sixty days, to institute such action. Service of summons upon the defendants, appraisal and sale of such real estate and distribution of the proceeds of the sale shall be made as provided in actions of foreclosure of mortgages and marshaling of liens; provided, however, the court may allow the plaintiff, in case he be the prosecuting attorney, a just and proper attorney fee, which shall be taxed with the costs of the action. And if the organization is for profit, it must have a capital stock. Such stock may consist of common and preferred, or of common only;

and if of both common and preferred, it may be provided in the articles of incorporation that the holders of the preferred stock shall be entitled to dividends not exceeding six per centum per annum out of the surplus profits of the company for each year in preference to all other stockholders, and that they may convert such preferred stock into common stock of the company at their election. 94 O. L. 65.

A corporation is an artificial being, which exists only in legal contemplation, and, being a mere creature of the law, possesses only those attributes which the law confers, or such as may be implied as necessary to its existence, and it can exercise no powers but such as are given to it by its charter, or such as are necessary to carry into effect the powers expressly conferred. *Bonham v. Taylor*, 10 Ohio, 108. And corporations are strictly limited to the exercise of such powers, and in such manner and by such agents, as are provided in their charters. *Bartholomew v. Bentley*, 1 Ohio St. 37; *State v. Wash. Library Co.*, 11 Ohio, 96.

Insurance companies cannot be incorporated under this section. *State v. The Pioneer Live Stock Co.*, 38 Ohio St. 347.

§ 3236. Articles of incorporation—What to contain—

Any number of persons, not less than five, a majority of whom are citizens of this state, desiring to become incorporated, shall subscribe and acknowledge, before an officer authorized to take acknowledgments of deeds, articles of incorporation, the form of which shall be prescribed by the secretary of state, which must contain:

1. The name of the corporation, which shall begin with the word "The" and end with the word "Company," unless the organization is not for profit.
2. The place where it is to be located, or where its principal business is to be transacted.
3. The purpose for which it is formed.
4. The amount of its capital stock, if it is to have capital stock, and the number of shares into which the stock is divided.
5. Provided, any association of five or more persons, who are residents of the State of Ohio, and who are associated, not for profit, and as the principal or ruling organization over subordinate organizations, associated, not for profit, and having a definite location or place of business in the State of Ohio, may be incorporated, having its location or principal place of business in the State of Ohio, and without naming, in its articles of incorporation, a permanent place where it is to be located, or where its

principal business is to be transacted. But such association must name, in its articles of incorporation, the place where it is to be located, or where its principal business is to be transacted, at the time of its incorporation, with the name and place of residence of its then principal officers. And when such association changes its place where located, or the place where its principal business is transacted, it shall be the duty of its principal officer, under its seal, if it has one, countersigned by the officer acting as secretary of such association, to certify to the secretary of state of Ohio, the place then selected by such association as its location, or where its principal business is to be transacted, with the name of its principal officers and their places of residence, which certificate the secretary of state shall record for public use in the records of his office. 86 O. L. 224.

The want of a seal to such instrument is such a defect as may be supplied by the court in a proceeding under sections 5867 to 5872, inclusive. Warner v. Callender, 20 Ohio St. 190. All private seals are now abolished. 81 O. L. 189. And an acknowledgment of such certificate before a notary, when the law required it to be taken before a justice of the peace, may also be corrected. State v. Lee, 21 Ohio St. 662. And the effect of the correction makes the corporation such *de jure* from its organization against persons dealing directly with it. Spinning v. Home B. & S. Ass'n, 26 Ohio St. 483. And in an action by a building and saving association to recover money which a member had as a loan from it, the member is estopped from setting up the defense of no corporation because the certificate of incorporation was acknowledged before the clerk of the court, and not before a justice of the peace, as the statute required. Lucas v. B. & S. Association, 22 Ohio St. 339. And having organized and acted as a corporation, and entered into the contract on which it was sued as such corporation, the corporation, and members thereof, were estopped to deny their corporate existence. Callender v. Railroad Co., 11 Ohio St. 516; Receivers of Bank v. Renick, 15 Ohio, 322.

The corporation is valid until dissolved, notwithstanding the members secretly intended to carry on the business exclusively in another state and did so. The State v. Taylor, 25 Ohio St. 279.

The place designated in the certificate determines conclusively the location of the principal office. Pelton v. Transportation Co., 37 Ohio St. 451.

Name of a stockholder included in corporate name cannot be used by another corporation so as mislead into belief that first corporation is dealt with. Thayer Co. v. Thayer Co., 6 N. P. 300 (Sup. Ct. Cin.).

Action of secretary of state in filing articles of incorporation is not conclusive as against another company claiming name of new company to be so similar to its own as to mislead the public. Cin. Vici Shoe Co. v. Cin. Shoe Co., 7 N. P. 135 (Sup. Ct. Cin.).

§ 3237. What articles must set forth in certain case—

When the organization is for a purpose which includes the construction of an improvement which is not to be located at a single place, the articles of incorporation must also set forth—

1. The kind of improvement intended to be constructed.
2. The termini of the improvement, and the counties in or through which it or its branches shall pass.

Statement of one terminus as "in or near" a place specified, and on the line of a specified road terminating at that place, is sufficiently certain. *Warner v. Callender*, 20 Ohio St. 190.

A certificate stating that the termini were to be in designated townships, and that the road should run through designated counties *or* other counties named, was held not void for uncertainty. *Callender v. R. R. Co.*, 11 Ohio St. 516. This seems irreconcilable with *R. R. Co. v. Sullivant*, 5 Ohio St. 276, where a certificate, said by the court to be very similar, was held void.

§ 3238. Certification of official character of officer before whom acknowledged, etc.—

The official character of the officer before whom the acknowledgment of articles of incorporation is made shall be certified by the clerk of the court of common pleas of the county in which the acknowledgment is taken, and the articles shall be filed in the office of the secretary of state, who shall record the same, and a copy duly certified by him shall be *prima facie* evidence of the existence of such corporation, and all certificates thereafter filed in the office of the secretary of state relating to the corporation shall be recorded; but the secretary of state shall not in any case file or record any articles of incorporation in which the name of the corporation is the same as one already adopted or appropriated by an existing corporation of this state or so similar to the name of such existing corporation as to be likely to mislead the public, unless the written consent of such prior existing corporation, signed by its president and secretary, be at the same time filed with such articles of incorporation. 92 O. L. 320.

§ 3238a. Authorized amendments—Proviso—Record—Notice—Waiver—Fee.

Any corporation incorporated under the general incorporation laws of the state, may, at any meeting of its members or stock-

holders, of which, and of the business to come before said meeting, thirty days' notice has been given by a majority of the directors or trustees of said corporation in a newspaper published and of general circulation in the county where the principal place of business of said corporation is located, by a vote of the owners of at least three-fifths of its capital stock then subscribed, in the case of corporations having a capital stock, or by a vote of at least three-fifths of the members of corporations having no capital stock, amend its articles of incorporation so as to change its corporate name; or the place where it is to be located, or where its principal business is to be transacted; or so as to modify, enlarge or diminish the objects or purposes for which it is formed; or so as to add thereto anything omitted from, or which might lawfully have been provided for in such articles originally; provided, however, that nothing in this supplementary section contained shall authorize a corporation, by amendment, to increase or diminish the amount of its capital stock; nor shall any corporation, by amendment, change substantially the original purposes of its organization. When adopted, a copy of such amendment, with a certificate thereto affixed, signed by the president and secretary of the corporation, and sealed with the corporate seal, if any there be, stating the fact and date of the adoption of such amendment, and that such copy is a true copy of the original, shall be recorded in the office of the secretary of state, who shall note on the margin of the record of the original articles of incorporation of said corporation, and on the margin of the index thereto, the volume and page where such amendment is recorded; and no such amendment shall take effect until filed for record with the secretary of state as herein provided, and until the secretary of the corporation shall have given notice, for three consecutive weeks, in some newspaper of general circulation in the county where the principal office of the corporation is situated, of such amendment; provided, however, that any or all of the notices required by this section may be waived whenever the holders of all of the capital stock of a corporation having a capital stock, or all the members of a corporation having no capital stock, consent thereto in writing. But no corporation shall change its name to one already appropriated, or to one likely to mislead the public; nor shall any corporation, by amendment, provide for a purpose which is unlawful. For recording

such amendments and for furnishing a certified copy, the secretary of state shall receive a fee of twenty cents a hundred words, to be in no case less than five dollars. 83 O. L. 193.

Construed, and duty of secretary of state discussed. *State v. Taylor*, Sec'y of State, 55 Ohio St. 61. See also *State v. Coal Co.*, 4 N. P. 115 (C. P.).

An amendment is authorized by this section changing charter of gas company so as to employ both gas and electricity for lighting. *Picard v. Hughey*, 58 Ohio St. 577.

§ 3239. Corporation thereby created, and its general powers—

Upon such filing of the articles of incorporation, the persons who subscribed the same, their associates, successors, and assigns, by the name and style provided therein, shall thereafter be deemed a body corporate, with succession and power to sue and be sued, contract and be contracted with, acquire and convey at pleasure all such real or personal estate as may be necessary and convenient to carry into effect the objects of the incorporation, and to make and use a common seal, the same to alter at pleasure, and to do all needful acts to carry into effect the objects for which it was created. 50 v. 274, § 3; S. & C. 273.

A contract made with a company before it is incorporated is void for want of mutuality. *Turnpike Co. v. Coy*, 13 Ohio St. 84.

An agent of a company, for a consideration paid, made a contract in the name of the company containing several stipulations, some of which he had authority to make, and as to others he was without authority: *Held*, that the company could not enforce part of the stipulations, and avoid the others because of the absence of authority in its agent to make them, but that it must execute the whole contract, or refund the consideration paid. *Weeden v. Railroad Co.*, 14 Ohio, 564.

If corporation engages in business *ultra vires*, only those stockholders who sanction the same are liable personally. *Bank v. Hall*, 35 Ohio St. 166.

Whether act of corporation is *ultra vires* depends on real object and the effect: and *Held*, that corporation could pay or secure private debt of its president, when the real object and effect was to pay or secure an indebtedness due him from the corporation. *Bank v. Flour Co.*, 41 Ohio St. 552. See also *Andres v. Morgan*, Trustee, 43 B. 292, and *De Camp v. Levoy*, 19 C. C. 335.

Implied powers of a corporation comprise all that are necessary, in the sense of appropriate, convenient and suitable. Whether acts are *ultra vires* depends upon their general character and scope; purchase of existing plant and claim for damages thereto, instead of building new plant, may be proper. *Central Ohio Co. v. Capital City Dairy Co.*, 60 Ohio St. 96.

Where the real purpose for which a corporation is formed is to use it as an instrumentality in the accomplishment of an illegal purpose, the fact of incorporation will not avail the promoters as a defense in a suit against them to recover money obtained from the plaintiff by such methods. *Brundred v. Rice*, 49 Ohio St. 640.

Corporation cannot recover damages for injury resulting from slander of officer, unless spoken in direct relation to trade or business of corporation. *Brayton v. Cleveland Special Police Co.*, 43 B. 448 (S. C.), reversing 19 C. C. 47.

Organizations having all the properties, rights, attributes, privileges and immunities of corporations, may be regarded as such by courts. *State v. Express Companies*, 1 N. P. 259 (C. P.), and 2 N. P. 98 (C. P.).

Corporate seal not necessary on deed since 1883. *East End Bld'g & Loan Co. v. Hughey*, 16 C. C. 19.

Where all stock but one share has been bought by one person, who has converted all the corporate property to his own use, the owner of the remaining share may bring suit for accounting directly against the other stockholder. *Dye v. Hermes*, 32 B. 120 (C. P.).

Where, upon dissolution of a firm, the assets, including the good will, are sold, the purchaser transfers the assets to a corporation organized to succeed to the business, such corporation may carry on the business under a corporate name including the name used by the firm. *Snyder Mfg. Co. v. Snyder*, 54 Ohio St. 86.

Article on question whether acts of individual stockholders can ever be regarded as act of the corporation. 32 B. 318.

A corporation may be estopped from defense of *ultra vires* when the act done was for its direct benefit, as becoming security upon a contract in consideration that the goods needed to complete it should be bought from the corporation. *Vill. of Glenville v. Praut*, 6 N. P. 152 (C. P.).

An assignment of a lease, purporting to be made in the name of a person described as the treasurer of an incorporated company, to which such person, as treasurer and in behalf of such company, sets his hand and the seal of the company, is not the act of the company. *Norris v. Dains*, 52 Ohio St. 215.

An agreement by solvent stockholders of an embarrassed corporation severally to contribute to pay corporate liabilities, creates a valid obligation; if the share to be contributed is not fixed, each should contribute in proportion to his stock; and where one has agreed as his contribution to surrender a note held against the corporation and some of the contributing stockholders for a corporate debt, and such other stockholders have performed the agreement on their part, they and the corporation may set up the contract in bar of a recovery in an action brought upon such note. *Sterling Wrench Co. v. Amstutz*, 50 Ohio St. 484.

Where a partnership is converted into a corporation, each partner receiving stock for his interest in the firm, the corporation is liable for the debts of the firm. *Andres v. Morgan, Trustee*, 43 B. 292 (Sup. Ct.).

The fiction that a corporation is a legal entity separate from its members cannot be used to accomplish a fraud; hence, where a failing debtor forms a corporation and conveys all his property to it in payment of his stock,

which is substantially all the stock, and places the stock with certain creditors with notice as collateral, he retaining control of the property as president and general manager, the conveyance will be held fraudulent in effect and be set aside. *First Nat. Bk. v. Trebein*, 59 Ohio St. 317.

To same effect, *The Sportsman's Shot Co. v. Am. Shot and Lead Co.*, 30 B. 87 (Sup. Ct., Cin.); *Ford, Rec., v. Lamson*, 17 C. C. 539.

That a corporation is a "legal entity" is a fiction which may be disregarded, and where all or a majority of the stockholders do an act in their individual capacities designed to affect the property and business of the company, which act is *ultra vires* of the corporation and against public policy, such act should be held that of the corporation, and may be challenged in *quo warranto* proceedings; an agreement by which all or a majority of stockholders transfer their shares to trustees, in consideration of stockholders of other companies doing likewise, and receive trust certificates from the trustees, who are to control the companies and receive all dividends and make dividends to the holders of the trust certificates, tends to create a monopoly, to control production and prices, and is against public policy. *State v. Standard Oil Co.*, 49 Ohio St. 137.

Such certificates, being void, are not taxable. *McDonald v. Haggerty, Auditor*, 7 C. C. 508; affirmed, 31 B. 143.

A franchise is not a subject-matter of contract or sale. *Toledo Bank v. Bond*, 1 Ohio St. 622.

Title to property or franchise will not be forfeited by non-user, except on judicial decree. *Webb v. Moler*, 8 Ohio, 548.

Where attempt is made in good faith to organize private corporation by colorable proceedings, approved by attorney-general and secretary of state, followed by user, and acquisition and enjoyment of valuable rights, it is a corporation *de facto*, and its corporate capacity cannot be questioned in a private suit to which it is a party. *Society Perun v. City of Cleveland et al.*, 43 Ohio St. 481.

Judgment of ouster is not retroactive in its effect upon rights acquired and liabilities incurred in course of transactions in good faith with such acting corporation prior to such ouster. *Ib.*

If the business conducted by the corporation is wholly *ultra vires*, the members or stockholders are individually liable. *Medill v. Collier*, 16 Ohio St. 599.

A corporation is liable in exemplary damages for libel where the agent committing the act was guilty of actual malice or of that wanton recklessness which is its equivalent. *Commercial Gazette Co. v. Grooms*, 21 B. 292.

The rule that a voluntary payment under mistake of law but with knowledge of the facts, cannot be recovered back, applies to corporations as well as to natural persons. *Ry. Co. v. Iron Co.*, 46 Ohio St. 44.

Furnishing wines, liquors, etc., to members of a corporation not for profit, at cost, is "trafficking in intoxicating liquors" within the act of May 14, 1886, and renders the corporation liable to assessment. *University Club v. Ratterman, Treas.*, 3 C. C. 18.

This section authorizes a corporation to borrow money to accomplish its legitimate objects, and secure same by note and mortgage. *Hays v. Gas Lt. & Coal Co.*, 29 Ohio St. 330.

Defense of *ultra vires* cannot be set up if either party has performed the contract. *Ib.*

"In ordinary actions where a corporation is a party, its existence cannot be questioned under a mere denial. The facts impeaching its validity must be stated, and if such facts relate to any violation of the constitutional or statutory provisions under which the company claims to exist, the state alone, and not the opposite party to the suit, can raise the question." 2 Bates' Pleading, 838, and cases cited. *Durrell v. Belding*, 9 C. C. 74. See also *Memphis, etc., Co. v. Fagarty*, 9 C. C. 418, and *Cin., etc., Co. v. Dodds*, 29 B. 61.

General denial does not question the right or capacity of plaintiff to maintain its action (but corporate capacity was not alleged in body of petition, only stated in caption as *descriptio personæ*); answer admitting execution of note in action thereon by foreign corporation is a *prima facie* admission of corporate capacity of plaintiff. *Elektron Mfg. Co. v. Jones Bros. Elec. Co.*, 8 C. C. 311; affirmed in 35 B. 239. See also *Durrell v. Belding*, 9 C. C. 74.

The making and filing, for the purpose of profit, of articles of incorporation, do not make an incorporated company, but are only authority to do so. No company exists until the requisite stock has been subscribed and paid in and the directors chosen. *State v. Ins. Co.*, 49 Ohio St. 440.

§ 3240. Trustees of corporations not for profit—

A majority of the subscribers of the articles of incorporation of a corporation formed for a purpose other than profit may elect not less than five trustees of the corporation, who shall hold their office till the next annual election or until their successors are elected and qualified; but in the case of religious corporations and institutions incorporated for the purpose of promoting education, science or art, the regulations of such corporations may provide for the length of time said trustees shall hold their offices, the term thereof not to exceed in number of years the number of such trustees; provided, that lodges, societies or bodies of any secret or benevolent order, incorporated under the laws of this state, may elect such number of trustees, not less than three, as may be provided in the laws or regulations governing such lodge, society or body, and the election of such trustees may be held at the time specified in such laws or regulations. 85 O. L. 166.

§ 3241. Membership in corporation, not for profit—Religious, secret and benevolent societies—

The subscribers of such articles of incorporation shall cause the same to be copied into a book which they shall provide, and which shall be the property of the corporation; and a person

having the qualifications prescribed by the corporation may become a member by subscribing his name to such copy; provided, that when the incorporators of a corporation, now or hereafter formed, are, or shall be members of a church, religious, secret or benevolent society, and have signed or shall sign articles for the purpose of enabling such church, religious, secret or benevolent society to become incorporated, any person who is or shall become a member of such church, religious, secret or benevolent society, in good standing, shall, by virtue of such membership, be a member of such corporation, and entitled to vote at all meetings of such corporation, for the election of officers or other purpose, anything in the preceding section to the contrary, notwithstanding. 84 O. L. 85.

Where the organic law is silent, the corporation itself possesses the inherent power to ascertain and declare the forfeiture, either of franchise or office; but, in every case the party to be affected should be duly summoned. *State v. Byrce*, 7 Ohio (2 pt.), 82. See also *Hershiser v. Williams*, 24 B. 314.

Where payment of a certificate by a "supreme council" was to be made upon death of a member in good standing in a branch; held, that a person who had been suspended and whose reinstatement had not taken place at death because he had not complied with all the conditions necessary, although he died pending inquiry by the branch, was not a member in good standing; and that the branch was not agent of the supreme council, so as to bind the latter by admissions. *Supreme Council of Cath. Knights v. Connema*, 3 C. C. 130.

A member of a voluntary association, whose laws provide for trial of disputes and claims, must submit to his own forum and is bound by its decision on his claim for "sick benefits." *Schryver v. Columbia Lodge*, 3 C. C. 422.

But resort to courts after the tribunal provided by an order has passed upon a claim cannot be cut off. *Myers v. Lucas*, 16 C. C. 545; *R. R. Co. v. Stankard*, 56 Ohio St. 224.

Concerning expulsion, see *Cheney v. Ketcham*, 5 N. P. 139 (C. P.) and *State v. Zesch*, 5 N. P. 274 (C. P.); *Fraternal Mystic Circle v. State*, 39 B. 43 and 43 B. 250 (Sup. Ct.).

Members of lodge of I. O. O. F. are not liable to another member for sick benefits, unless there is some law of the order expressly making them liable. Proceedings on appeal from determination of the order. *Myers v. Jenkins*, Adm'r, 43 B. 449 (Sup. Ct.).

Trustees of religious society cannot sell its real estate without authority from association and from court, *Sunday School Ass'n v. Espy*, 17 C. C. 524; nor bind the corporation, except by action taken collectively as a board. *Young & Fulton Co. v. Taylor St. Church*, 5 N. P. 398 (C. P.).

§ 3242. Corporations for profit to give notice of opening books for subscription—Notice may be waived—

The persons named in the articles of incorporation of a corporation for profit, or a majority of them, shall order books to be opened for subscription to the capital stock of the corporation, at such time or times and at such place or places as they may deem expedient, and of the time and place of opening which books at least thirty days' notice shall be given by publication in a newspaper published or generally circulated in the county or counties where books of subscription are to be opened; provided, that such notice may be waived in writing by all the incorporators, and such waiver shall be entered or copied in the records of said corporation. 88 O. L. 280.

Not necessary to make stock subscriptions in a book opened by the company for the purpose. *Railroad Co. v. Smith*, 15 Ohio St. 328. The omission to pay ten per cent at the time of subscription does not release subscribers from liability to pay their subscriptions. *Henry v. Railroad Co.*, 17 Ohio, 187. It is not even necessary that the subscription provide for the payment of the amount in hand. *Chamberlain v. Railroad Co.*, 15 Ohio St. 225. And an agreement, by which a right was attempted to be secured by a stockholder to pay his stock subscription in anything else than money, will be treated as a fraud on the other stockholders, and the payment of the subscription in money enforced. *Henry v. Railroad Co.*, *supra*; *Noble v. Callender*, 20 Ohio St. 199.

A subscriber may insert in his subscription any conditions precedent he may choose, and, until they are performed, his relation as stockholder does not arise. *Chamberlain v. Railroad Co.*, *supra*. Conditional subscriptions become absolute on the performance of the conditions. *Railroad Co. v. Smith*, 15 Ohio St. 328. And where such a subscription was delivered to the company before the election of directors, and, after the election of directors, the condition was performed, the subscription took effect at the time of performance. *Ib.* A condition that the road should "pass through" a given locality is performed by the location of the road on the route designated. *Railroad v. Smith*, *supra*; *Railroad Co. v. Stout*, 26 Ohio St. 241. A condition in the words "provided the road is built" in a certain locality, is performed when the road is permanently located at that place, although, from failure of funds, it is never completed. *Warner v. Callender*, 20 Ohio St. 190. And a condition in the words "provided the road is located" on a given route, "and that a freight-house or depot be built" at a point named, is performed on the permanent location of the road in accordance with the condition, and the provision in relation to the erection of buildings is a stipulation merely, and not a condition precedent. *Chamberlain v. Railroad Co.*, *supra*. But a subscription upon the condition that the same should be expended upon a certain line of road to be thereafter located by the company cannot be enforced, unless the company shows that the road has been con-

structed on that line, or offers, and is ready, to expend the money according to the condition. *Trott v. Sarchett*, 10 Ohio St. 241. And when the maker of a conditional subscription pays a part of it, and for the balance gives his note, and accepts from the company a receipt stipulating that when the note is paid the amount should be applied on his stock he thereby waives the conditions precedent. *Chamberlain v. Railroad Co.*, *supra*.

It is no defense to an action upon a stock subscription that the defendant, with others, was guilty of a violation of law in assuming to do business under the act of incorporation under which the organization of the company was effected, or intended to be effected. *Voorhees v. Receivers*, 19 Ohio, 463. Nor will a member of a mutual fire insurance company, when sued upon an assessment on his deposit note, be permitted to set up, by way of defense, that he and his associate corporators have neglected to comply with the provisions of their charter. *Insurance Co. v. Horner*, 17 Ohio, 407. But a subscriber to stock may defend against an action on his stock subscription by showing that there never was any such corporation. *Navigation Co. v. Eagle*, 29 Ohio St. 238. But whether a stockholder, who for years has dealt with the corporation, can, when sued for unpaid subscriptions, set up technical defects in the certificate of incorporation, *quære*. *Warner v. Callender*, *supra*.

A note given for stock subscribed, without any intention to pay it, and merely for the purpose of pretending to the public that the stock was greater than it really was, or for the purpose of preventing the predominance of certain stockholders, is valid, and its payment will be enforced. *Bates v. Lewis*, 3 Ohio St. 459. And an assignment of stock to a fictitious person is a nullity. *Turnpike Co. v. Ward*, 13 Ohio, 120.

An immaterial change in the route of a turnpike company does not release a subscriber. to the stock of the company from his obligation to pay his subscription. *Turnpike Co. v. Brush*, 10 Ohio, 111. But where, after a subscription to stock in a corporation, the powers of the corporation were extended, and it was authorized to engage in a business not contemplated by the original charter, it was held that the subscription could not be enforced. *Railroad Co. v. Elliott*, 10 Ohio St. 57.

Where a married woman makes a subscription to the capital stock of a railroad company, by which she agrees to take and pay for a certain number of shares of the stock, but makes default in payment, and action is brought to charge her separate property with the amount of such subscription: *Held*, that in the absence of any proof that either party dealt on the credit of her separate property, equity will not imply or enforce a charge against the same. *Rice v. Railroad Co.*, 32 Ohio St. 380. But see *Williams v. Urmston*, 35 Ohio St. 296.

Verbal promise to take shares is not binding, unless on principle of estoppel. *Fanning v. Insurance Co.*, 37 Ohio St. 339.

Subscribers to the stock of a *de facto* corporation cannot release themselves from payment of their subscriptions. *Gaff v. Flesher*, 33 Ohio St. 107. Ouster in *quo warranto* proceedings is no defense to such liability, and there is no difference between corporations *de jure* and *de facto* in that respect. *Ib.*, and *Rowland v. Meader Furniture Co.*, 38 Ohio St. 269.

§ 3243. When subscriptions payable—

An installment of ten per cent on each share of stock shall be payable at the time of making the subscriptions, and the residue thereof shall be paid in such installments, and at such times and places, and to such persons, as may be required by the directors of the corporation. 50 v. 274, § 6; S. & C. 296.

Where partners organize a corporation and transfer partnership property at inflated valuation to the corporation in payment of stock, if the corporation becomes insolvent the transaction will be regarded as a fraud, and each partner will be held liable for difference between stock issued to him and the actual value of his interest in the partnership property transferred. *Gates, Adm'r, v. The Tippecanoe Stone Co.*, 57 Ohio St. 60, affirming 9 C. C. 99. See also *Ford, Rec., v. Lamson*, 17 C. C. 539.

Before an action can be maintained by a railroad company to recover unpaid subscriptions to its stock, its board of directors must have required the same to be paid in certain installments, and at a certain time and place. *Railroad Co. v. Hall*, 26 Ohio St. 310. And under the general corporation act assessments on subscriptions to the capital stock of railroad companies might be made and enforced, although the whole amount of such stock mentioned in the certificate of incorporation may not have been subscribed. *Jewett v. Railway Co.*, 34 Ohio St. 601.

A notice to pay installments to the treasurer of the company implies that the payment is to be made at his office, and is sufficient. *Turnpike Co. v. Ward*, 13 Ohio, 120. And where the law required "at least sixty days' notice," a single notice, published at least sixty days before the day of payment, is all that is required. *Id.*

A subscription to a railway company, payable when the road is completed, does not pass by a sale of the road, subscriptions, etc., to another company which completes the road. *R. R. Co. v. Hinsdale*, 45 Ohio St. 556.

Subscribers cannot release themselves by refusal to pay when subscriptions are necessary for payment of corporate debts. *Gaff v. Flesher*, 33 Ohio St. 107, and *Royce et al. v. Tyler*, 2 C. C. 175. Nor will stockholders be permitted to show that subscriptions were made prior to filing articles of incorporation. *Id.*

§ 3244. Certificate of subscription to stock, and notice of election of directors—

As soon as ten per cent. of the capital stock is subscribed, the subscribers of the articles of incorporation, or a majority of them, shall so certify, in writing, to the secretary of state, and thereupon shall give notice to the stockholders, as provided in section *three thousand two hundred and forty-two*, to meet at such time and place as they may designate, for the purpose of choosing not less than five nor more than fifteen directors, who shall continue in office until the time fixed for the annual election, and until

their successors are chosen and qualified ; provided, that in case all subscribers are present in person, or by proxy, such notice may be waived in writing, and the incorporators of the company shall be liable to any person affected thereby, to the amount of any deficiency in the actual payment of said ten per cent at the time of so certifying. 77 O. L. 266 ; S. & C. 276 ; 91 O. L. 304.

Liability of incorporators is for amount of deficiency in actual payment of ten per cent of authorized capital stock ; and creditors need have no knowledge of certificate to entitle him to its benefit. *Hessler v. Cleveland, etc., Co.*, 61 Ohio St. 621.

It is not necessary that this notice be given by the persons named in the certificate of incorporation, and the provision in regard to notice is directory merely ; if, after the necessary amount of stock has been subscribed, the stockholders meet and elect directors, the acts of the directors cannot be questioned collaterally, on account of irregularity in their election. *Chamberlain v. Railroad Co.*, 15 Ohio St. 225.

This section requires only that the fact of ten per cent being *subscribed* be certified ; but the entire section and section 3243 show that before electing directors ten per cent., at least, of the capital stock shall be paid.

When in a petition it is averred that directors of a railroad company had been duly elected by the stockholders, in pursuance of notice, it is to be presumed that the requisite amount of stock has been subscribed to authorize such election, and also to authorize the location of the road, and the making of assessments by the directors so elected. *Railroad v. Smith*, 15 Ohio St. 328.

See 17 B. 130, for article on power to remove directors for cause. See note to *Trust Co. v. Floyd*, 47 Ohio St. 525, under sec. 3248.

§ 3245. Conduct of election—

At the time and place appointed, directors shall be chosen, by ballot by the stockholders who attend for that purpose, either in person or by lawful proxies; at such election and at all other elections of directors, every stockholder shall have the right to vote in person or by proxy the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors shall not be elected in any other manner. A majority of the number of shares shall be necessary for a choice, but no person shall vote on any share on which any installment is due and unpaid. At such first election the subscribers of the articles of incorporation, or any of them as may be present, shall be inspectors of such election, and shall

certify what persons are elected directors, and shall appoint the time and place for holding their first meeting. 93 O. L. 230.

See note to form No. 34.

See 104 Pa. St. 150-154; 109 Pa. St. 560; 103 Cal. 357.

One receiving majority of votes so cast is elected, though he does not receive the votes of the holders of a majority of the shares. *Schwartz v. State*, 61 Ohio St. 497.

Directors cannot appoint inspectors. *State v. Merchant*, 37 Ohio St. 251.

Under former statute stockholders could not cumulate their votes in election of directors or officers. *State ex rel. Baumgardner v. Stockley*, 45 Ohio St. 304.

Stockholders may place their stock in the hands of a depository with direction to vote as directed by a committee appointed by themselves and subject to their control. The validity of the election of a director does not depend on what he may contemplate doing when elected. *Railway Co. v. State*, 49 Ohio St. 668.

§ 3245a(1). Corporations may limit votes of stockholders—

A corporation may provide in its articles of incorporation that each stockholder, irrespective of the amount of stock he may own, shall be entitled to one vote, and no more, at any election of directors or upon any subject submitted at a stockholders' meeting, and when such provision is made it shall be governed thereby.

§ 3245b(1). Provisions to which subject—

Every corporation where articles of incorporation contain the limitation mentioned in section *thirty-two hundred and forty-five (a)*, shall be subjected to the following provisions:

1. No person shall hold or own stock in excess of one thousand dollars face value.

2. The directors shall annually, within thirty days after the thirty-first day of December, make and file with the recorder of the county in which the corporation is doing business, a statement of its financial condition upon the said thirty-first day of December, plainly setting forth its assets and liabilities in detail, the amount of its paid up capital stock, the names of its stockholders, and the number of shares owned by each, and said statement shall be signed and sworn to by a majority of the directors, including the treasurer, before any officer authorized to administer oaths in this state. If the board of directors fail to make the annual statements required by this section, or if they make a false state-

ment, they shall be personally liable for all claims and demands against such corporation.

3. By-laws for the government of the corporation, and for the distribution of its net earnings among its workmen, patrons, and shareholders, not inconsistent with the constitution and laws of the state, may be made by the stockholders. 81 O. L. 54.

Two sections bearing these numbers, each covering a different subject, are in force.

§ 3245a(2). Application for appointment of inspectors of election—Notice—

Within fifteen days next before any meeting held for the election of directors or trustees, or for the determination of any question, by the stockholders of any corporation, or by the subscribers to its stock, or by its creditors and stockholders for its reorganization, any person or persons entitled to vote at said meeting and owning at least a one-tenth interest in its stock may apply to the court of common pleas of the county wherein said meeting is to be held, or, if the court be not in session, to a judge thereof, or, in case of the absence or disability of such judge, then to the probate court, for the appointment of inspectors for such meeting; but no such application shall be acted upon until notice thereof has been served upon the corporation at its general office; and the court or judge may require such additional notice by newspaper publication, or otherwise, as may be deemed proper. 84 O. L. 115.

§ 3245b(2). Appointment of inspectors—Vacancies—

Upon the hearing of such application the court or judge shall appoint three competent disinterested persons inspectors for such meeting, if such appointment be considered proper and right, and for good cause may thereafter vacate such appointment as to one or more of said persons and appoint another or others instead. In case of the failure of any inspector to attend said meeting, or to act thereat, the stockholders may fill the vacancy so caused. 84 O. L. 115.

§ 3245c. List of stockholders to be delivered to inspectors—Stock ownership how ascertained—

Before every such meeting it shall be the duty of the officer or the agent of the corporation having charge of the transfer of its

stock, to make out, under oath, a list of its stockholders, showing the number and classes of share, held by each, as shown by its books, on the date fixed for closing the stock transfers before its meetings; and if no time be fixed therefor, then on the tenth day prior to the date of such meeting. Such list shall be delivered to the inspectors of the meeting, and shall be *prima facie* evidence of the ownership of its stock; but in case of its absence the inspectors shall ascertain the ownership of stock by the corporation books, stock certificates or other satisfactory proof. 84 O. L. 115.

§ 3245d. Conduct of election by inspectors—Certificate of result—

The inspectors so appointed, or if none be appointed, then those selected by the meeting, shall receive and count the votes cast at such meeting, or at any adjournment thereof, either upon an election, or for the decision of any question to be decided by vote, and determine the result, and their certificate of result shall be *prima facie* evidence thereof. 84 O. L. 115.

§ 3245e. Compensation of inspectors—

The court or judge making the appointment of inspectors may fix their compensation, and may require the applicants for their appointment to secure its payment; but the corporation shall be liable therefor if the meeting by vote so determine. 84 O. L. 115.

§ 3246. Annual and other elections for trustees and directors—

Unless the regulations of the corporation otherwise provide, an annual election for trustees or directors shall be held on the first Monday in January of each year; if trustees or directors are, for any cause, not elected at the annual meeting, or other meeting called for that purpose, they may be chosen at a members' or stockholders' meeting, at which all the members or stockholders are present in person or by proxies, or at a meeting called by the trustees or directors, or any two members or stockholders, notice of which has been given, in writing, to each stockholder, or by publication in some newspaper printed in the county where the corporation is situate, or has its principal office, for ten days; and trustees and directors shall continue in office until their suc-

cessors are elected and qualified. Except that any corporation, the principal object of which is the owning and operating of a club-house for the use of its stockholders, the club-house of which is not kept open and operated for the use of its stockholders during the winter season, shall hold its annual election of directors on the third Monday in July of each year, and such election shall be held at the club-house owned and operated by such corporation. 94 O. L. 374.

See note to form under this section.

Where the stockholders' meeting is stated and general notice of the time and place of holding it, or of the business to be transacted, is, in the absence of provision or regulation to the contrary, in no case required. *State v. Bonnell*, 35 Ohio St. 10. An adjourned meeting is simply a continuation of the regular meeting, and notice to the stockholders of the holding of such adjourned meeting is not necessary; and any business commenced at the regular meeting may be completed at an adjourned meeting. *Ib.*; *Wiswell v. First Cong. Church*, 14 Ohio St. 31. But when the corporation was restrained from holding an election for directors on the day named in the charter, and a small number of the stockholders met, organized and adjourned till the next day, at which time an election was held by a minority of the stockholders, without notice to others who were in the vicinity for the purpose of the meeting, and might have been readily notified: *Held*, that such election was unfair, and must be held to be invalid, whether the restraining order did or did not bind the stockholders; and the directors chosen at such adjourned meeting were ousted, and those elected at the preceding annual election were restored to office, to continue therein till their successors were duly elected and qualified. *Ib.*

Election may be had, though property sold by receiver. *State v. Merchant*, 37 Ohio St. 251.

To vote more than once at such election is not a criminal offense. *Lane v. State*, 39 Ohio St. 314.

The validity of the election of a director does not depend upon what he may contemplate doing when elected. *Railway Co. v. State*, 49 Ohio St. 668.

Where at a meeting it is understood that the election be postponed until an hour agreed on, or that takes place which justifies the holders of a majority of stock in such understanding an election held by minority stockholders, parties to such arrangement, in the absence of the other parties, and prior to such time agreed on, will not be upheld. *State v. Smalley*, 7 C. C. 400.

§ 3247. Oath and duties of trustees and directors—

Each trustee and director shall, before entering upon his duties, take an oath faithfully to discharge the same; the trustees or directors chosen at any election shall, as soon thereafter as convenient, choose one of their number to be president, and, un-

less the regulations otherwise provide for the election of such officers, shall appoint a secretary and treasurer of the corporation; and a majority of the trustees or directors shall form a board.

A president *pro tem.* has no power, without special authority from the directors, to execute an assignment for benefit of creditors, or a mortgage, for the corporation. *Bank v. Bank*, 3 C. C. 516.

The president of a corporation has no power by virtue of his office to execute a judgment note for the corporation; but such act may be authorized or ratified. *Smead Foundry Co. v. Chesbrough*, 18 C. C. 783.

A committee, duly empowered by a corporation to negotiate a sale of bonds, have power to employ a broker to sell same, who may recover the reasonable value of such services. But a sale at less than par is not authorized in absence of authority from the board of directors. *East Clev. Ry. Co. v. Everett*, 15 C. C. 181.

But president has no power by virtue of his office, nor as general manager of company's routine business, to sell the bonds or employ another to do so; nor would such contract of hiring be brought to notice of board of directors or be ratified by the fact that two directors knew of efforts to sell and were present when some of the bonds were delivered to purchasers. Duty of borrowing money and mortgaging property is placed upon the board of directors. *East Clev. Ry. Co. v. Everett*, 19 C. C. 205.

A person holding one share may serve as director, although he has given an option, not yet exercised, to sell his share at a price named. *Kuhn v. Woolson Spice Co.*, 13 C. C. 547.

Directors are personally liable for loss of corporate assets through their gross negligence. *Miesse v. Loren*, 5 N. P. 307 (C. P.).

§ 3248. Powers of the board of trustees and directors—

The corporate powers, business and property of corporations formed under this title must be exercised, conducted and controlled by the board of directors, or, where there is no capital stock, by the board of trustees; a majority of the directors must be citizens of the state; all directors, and all executive officers, must be holders of stock in an amount to be fixed by the by-laws, and trustees of corporations must be members thereof; and whenever the office of director or trustee becomes vacant, the board of directors or trustees may fill the same for the unexpired term by appointment, unless the by-laws otherwise provide; and no person shall be appointed or act as a receiver of any railroad or other corporation within this state unless he is a resident citizen of this state.

Corporations are trustees for the individuals of which they are composed, and those who act for the corporation are trustees for it, and cannot apply

the corporate property to any other purpose than for the general interests of the corporation and its creditors. *Taylor v. Exporting Co.*, 5 Ohio, 162. The creditors and stockholders may pursue the property of the corporation which has been fraudulently or wrongfully disposed of by the directors, into the hands of all purchasers with notice, and assert their lien upon it, or their claims for its value. *Goodin v. Canal Co.*, 18 Ohio St. 169. And the officers, agents and assenting stockholders of a corporation, who, in the exercise of powers not granted to the corporation, occasion injury to others, are liable in damages therefor. *Medill v. Collier*, 16 Ohio St. 599; *Kearney v. Buttles*, 1 Ohio St. 362; *Lawler v. Burt*, 7 Ohio St. 340, where the unauthorized issue of notes as money by a corporation was held to make the stockholders liable in *tort*, overruling *Lawler v. Walker*, 18 Ohio, 151.

Where agent of corporation makes contract for services and property for use of company, which is performed by the other party, the company deriving the benefit, such company cannot refuse to perform on ground that the agent was not authorized to stipulate for payment in the mode specified in contract. *Powell Tool Co. v. McDonald*, 13 B. 64.

Mere irregularities in organizing a corporation will not deprive the officers and stockholders of the protection of the charter, but such organization, to protect them, must be substantially in accordance with the charter. *Bartholomew v. Bentley*, 1 Ohio St. 37. Where the charter provided that stockholders only should be elected directors, persons having no interest in the stock, but fraudulently and collusively receiving the transfer of a share to qualify them, are not eligible, and the stockholders combining in such fraud have no power to confer upon them authority to do corporate acts; and such fraud upon the charter, and combination to defraud the public, will prevent those participating in it from claiming any protection under its provisions, to escape private responsibility. *Id.* A board of directors has no power to fill vacancies after so long a period since the last election that the delay must be regarded as an abandonment or resignation of the office. *Id.* The acts of a board with less than a quorum are voidable, not void. *Rolling Stock Co. v. R. R. Co.*, 34 Ohio St. 450.

Corporation may borrow money to pay debts and carry on business, and may mortgage all its property to secure such loans; such mortgage executed by president and secretary, though without knowledge of other directors, is valid in hands of mortgagee without knowledge of that fact; creditor is not bound to inquire whether meeting held and formal resolution passed. *Bosche v. Toledo Display Horse Co.*, 14 C. C. 289.

Question whether a director may buy property of corporation at foreclosure sale, discussed. *Secor, Trustee, v. Maumee Rolling Mill Co.*, 1 N. P. 100 (C. P.).

Executory contract between director and corporation is voidable at option of corporation. *Browne v. U. S. Co.*, 6 N. P. 254 (C. P.).

Corporation cannot become a partner. *Merchants' Bank v. Standard Wagon Co.*, 6 N. P. 264 (Sup. Ct., Cin.).

A corporation duly organized continues to have corporate existence until dissolved under the statute. Removal of plant and directors to another state does not end the corporation. *Lattimer v. Mosaic Glass Co.*, 13 C. C. 163.

An executive committee appointed to discharge the duties of the board of directors, but not to incur debts except for current expenses, unless specially authorized, have no authority to mortgage realty to pay current expenses. A director cannot give a proxy. *Ohio Valley Nat. Bank v. Walton Arch. Iron Co.*, 30 B. 382 (Sup. Ct., Cin.).

Stockholders and others dealing in good faith with certificates of stock bearing genuine signatures and the genuine seal of the corporation, but in fact fraudulently issued, may hold the corporation whose negligent supervision enabled the fraud to be perpetrated. The fact that the certificates were in favor of one of the certifying officers, does not put lenders of money thereon on inquiry. *Cit. Nat. B'k of Cin. v. Ry. Co.*, 29 B. 15 (Sup. Ct., Cin.).

Spurious stock issued by an officer having apparent authority are clouds upon title of genuine stockholders which a court of equity will remove. As to suit for that purpose, see *Robison v. Clev. City Ry. Co.*, 5 N. P. 293 (C. P.).

Sale of property of a corporation to another corporation, by directors who were also stockholders and directors of the second company, whereby they realized large sums, but by assuming great responsibilities, cannot be complained of by stockholders of first company if they received full value without taking risks, and acquiesced for years. Relation of directors to corporation is that of a fixed trust, but this ceases on denial of right. *Larwill v. Burke*, 19 C. C. 449, 513.

Although a director ceasing to own stock will not be permitted to act if question is made, a mortgage made by him of personal property will be valid as that of a *de facto* director. *Campbell, etc., Co. v. Bellman Bros. Co.*, 1 C. C. 360.

Fraudulent and collusive transfer of shares do not qualify to become directors. *Bartholomew v. Bentley*, 1 Ohio St. 37.

Admissions made by an officer of a corporation, after a transaction, to one not connected with the transaction, when the corporation is not called upon to say something, will not bind the corporation. *Sloss Marblehead Lime Co. v. Smith*, 11 C. C. 213. (Reversed, 57 Ohio St. 518, but not on this point.)

Directors are not personally liable in damages to stockholders for losses incurred by adding a new branch of business, if they acted in good faith and the stockholders, with full knowledge, acquiesced. *Bond v. Poe*, 12 C. C. 281.

Notes of a corporation, signed in its name by its president and secretary, payable to the president's order, are presumptively unauthorized; and subsequent indorsees, though for value and in good faith and before maturity, take with notice. *Arnkens v. Rouse*, 26 B. 221 (C. P.).

It is otherwise as to certificates of stock. *Cit. Nat. B'k v. Ry. Co.*, 29 B. 15 (Sup. Ct., Cin.).

A pledgee of shares has no right of action against directors to recover damages for negligence and mismanagement, whereby the assets of the corporation are lost and the shares rendered valueless. *Barnes v. Executor*, 26 B. 110 (Sup. Ct., Cin.).

Where use of funds in purchase of stock in another corporation is forbidden by statute, it is not intended to limit the power to become a member of

a building association to borrow money for its business. *Norwalk Sav. B'k Co. v. Norwalk Metal, etc., Co.*, 14 C. C. 1.

This means the *whole* board lawfully elected. If the corporation excludes some directors from exercising the duties of their office, the public is concerned, and relief will be granted by *quo warranto*. *State v. Ohio & Miss. Ry. Co.*, 6 C. C. 412.

A director dealing in property of the corporation on his own account is chargeable with notice of the action of the board as to such property, whether he was present or not at the meeting which took such action. A president holding a bond in trust for sale has no right to convert it to his own use in payment of a claim due him from the corporation without the consent of the board of directors, and a director or stockholder holding such bond in trust may in equity be compelled to surrender it to the corporation. *Greenville Gas Co. v. Reis*, 54 Ohio St. 549.

The discretion of the board of directors in meeting competition by reducing prices below cost cannot be enjoined unless a clear abuse is shown. Any stockholder may bring suit to prevent illegal act of directors or managers, only where it is *bona fide* his own suit. *Kuhn v. Woolson Spice Co.*, 13 C. C. 547.

Where capital is lost through negligence of directors of corporation, cause of action is not in favor of a stockholder, but of the corporation. *Zinn v. Baxter*, 17 C. C. 283.

A corporation is liable as for a conversion for refusing to transfer to a pledgee shares of stock indorsed in blank by the pledgor. *Bank v. Bank*, 37 Ohio St. 208; *Railroad Co. v. Rawson*, 16 B. 423.

Court will not interfere with directors acting within scope of their authority, unless guilty of breach of trust to injury of complaining stockholder. *Sims v. St. R. R. Co.*, 37 Ohio St. 556.

A corporation for profit, organized under the laws of this state, after it has become insolvent and ceased to prosecute the objects for which it was created, cannot, by giving some of its creditors mortgages on the corporate property to secure antecedent debts without other consideration, create valid preferences in their behalf over the other creditors, or over a general assignment thereafter made for the benefit of creditors. *Rouse, Trustee, v. Merchants' Nat. B'k*, 46 Ohio St. 493. Such transfers are voidable in equity. *Bryant v. Johnson*, 12 C. C. 102. See also *Phillips v. Ammon-Stevens Co.*, 2 N. P. 187 (C. P.); *Remington v. Central Press Ass'n Co.*, 3 N. P. 258 (C. P.); *Benedict v. Bank*, 19 C. C. 408.

The doctrine of *Raus, Trustee, v. Bank*, does not apply to transactions in another state of an insolvent non-resident corporation. *First Nat. B'k v. McKinney, Rec.*, 16 C. C. 80.

As to *cognovit* notes, see Assignment. *Winchell Mfg. Co.*, 1 N. P. 136 (C. P.).

As to doctrine of *ultra vires*, see *Hill v. Cin. Hotel Co.*, 25 B. 425.

Where an insolvent corporation executes a mortgage upon its property to a creditor and at the same time an assignment to a trustee for the benefit of creditors, they will be regarded as one instrument, operating as an assign-

ment for the equal benefit of all creditors of the corporation. *Com. Nat. B'k v. Cincinnati Nat. B'k*, 3 C. C. 513. But a mortgage executed by a corporation to secure a pre-existing debt is not necessarily invalid for the reason that the company was known to be insolvent, where the company is at the time in the possession of its property and in the actual prosecution of its business and intends to continue therein unless prevented by other creditors, and the object of the mortgage is not to give preference to one creditor, but simply to obtain an extension of credit. *Damarin v. Huron Iron Co.*, 47 Ohio St. 581.

Directors cannot be elected until ten per cent has been subscribed; persons contracting as directors when less than ten per cent has been subscribed are without authority to create corporate obligations, and are personally liable, although they believe that they are contracting in behalf of a legally constituted corporation, and that they have authority to bind it by the contract. *Trust Co. v. Floyd*, 47 Ohio St. 525. See also *Raymond, Trustee, v. Railroad Co.*, 21 B. 103.

Where there is a controversy as to whether a vacancy exists, an election is proper. The title to the office should be tried in a proceeding in *quo warranto*, not in a proceeding to enjoin an election. *Hooe v. Hall*, 9 C. C. 654.

§ 3249. Regulations—

Every corporation may adopt a code of regulations for its government, not inconsistent with the constitution and laws of the state.

§ 3250. By-laws—

The trustees or directors of a corporation may adopt a code of by-laws for their government, not inconsistent with the regulations of the corporation, or the constitution and laws of the state, and may change the same at pleasure.

§ 3251. How Regulations adopted—

Regulations may be adopted or changed by the assent thereto, in writing, of two-thirds of the stockholders, or, if there is no capital stock, of the members, or by a majority of the stockholders or members, at a meeting held for that purpose, notice of which has been given by the acting president personally to each member or stockholder, or by publication in some newspaper of general circulation in the county in which the corporation is located, or in the counties through which its improvement does or will pass.

§ 3252. What provided for by regulations—

A corporation, by its regulations, when no other provision is specially made in this title, may provide for—

1. The time, place and manner of calling and conducting its meetings.
2. The number of stockholders or members constituting a quorum.
3. The time of the annual election for trustees or directors, and the mode and manner of giving notice thereof.
4. The duties and compensation of officers.
5. The manner of election, or appointment, and the tenure of office, of all officers other than the trustees or directors.
6. The qualification of members when the corporation is not for profit.

Secretary is *prima facie* entitled to compensation in absence of contract and provision in by-laws, but where circumstances show an intention by both parties that he should be paid. *Dalton v. Brush El. Light Co.*, 13 C. C. 305.

§ 3253. How payment of stock subscriptions enforced—

If an installment of stock remain unpaid for sixty days after the time it is required to be paid, whether such stock is held by an assignee, transferee, or the original subscriber, the same may be collected by action, or the directors may sell the stock so unpaid at public auction, for the installment then due thereon, first giving thirty days' public notice of the time and place of sale, in some newspaper in general circulation in the county where the delinquent stockholder resided at the time of making the subscription, or of becoming such assignee or transferee, or of his actual residence at the time of the sale; or, if such stockholder resides out of the state, such publication shall be made in the county where the principal office of the company is located; if any residue of money remain after paying the amount due on the stock, the same shall, on demand, be paid to the owner; and if the whole of the installment be not paid by the sale, the remainder shall be recoverable by an action against the subscriber, assignee, or transferee. 51 v. 484; § 1; 50 v. 274, § 7; S. & C. 276, 319.

See notes to sec. 3242.

**§ 3254. Stockholders entitled to certificates of stock—
Record of—**

Stockholders shall be entitled to receive certificates of their paid up stock in the company ; and the president and secretary of the company shall, on demand, execute and deliver to a stockholder a certificate showing the true amount of the stock held by him in the company. And it shall be the duty of the directors of such corporation, when organized, to keep a record of all stock subscribed and transferred, and of the secretary or recording officer of such corporation to register therein all subscriptions and transfers of stock. For that purpose a book shall be kept ; and whenever any certificate or certificates of stock are assigned and delivered by a stockholder the assignee thereof shall be entitled on demand to have the same duly transferred upon said book by such secretary or recording officer, whose duty it shall be at the same time to enroll therein also the name of said assignee as a stockholder, and the books and records of such corporation shall be at all reasonable times open to the inspection of every stockholder. 81 O. L. 196.

A corporation may become the purchaser of its own stock in payment of debts owing to it. *Taylor v. Exporting Co.*, 6 Ohio, 177 ; *State v. Franklin Bank*, 10 Ohio, 91. And this seems to be the only legitimate way in which it may become the owner of its own stock. *State v. Franklin Bank*, *supra*; *Coppin v. Greenlees & Ransom Co.*, 38 Ohio St. 275, where it was held that an executory agreement for the purchase of shares in a company could not be enforced against the company itself. See also *State v. Building Association*, 35 Ohio St. 258. But a corporation has no power to purchase the bonds of another corporation for the purpose of controlling such corporation. *State v. McDaniel*, 22 Ohio St. 354.

Directors of corporations have no power to pay dividends to stockholders not out of profits ; and where directors have assumed to sell stock, and stipulated to pay annual interest thereon for a certain time, payment of such interest cannot be enforced when the corporation has nothing out of which to make payment but its capital stock, and it owes other debts. *Railroad Co. v. King*, 17 Ohio St. 534. And when the directors of a corporation have ordered its treasurer to allow interest, payable in stock, to those subsequently paying installments on stock subscriptions, and such payments of interest are actually made, the order inures to the benefit of those stockholders who had paid their subscriptions before the order was made. *City of Ohio v. Railroad Co.*, 6 Ohio St. 489.

Mandamus is not the proper remedy to enforce performance of a duty not specifically enjoined by law, imposed upon officers of a private corporation organized for profit merely, where there is a plain and adequate remedy at law or in equity. *Freon v. Carriage Co.*, 42 Ohio St. 30.

The purchaser of shares in such corporation cannot compel their transfer by mandamus, where his incidental rights as stockholder do not depend on ownership of these specific shares. *Id.*

Pledgee of stock as collateral is equitable owner, and may surrender certificate and have new certificate in his own name. *Haldeman v. R. R. Co.*, 2 Handy, 101. But equitable owner cannot recover value of stock from company, if certificates are out in name of another claiming to be owner. *Bank v. R. R. Co.*, 21 Ohio St. 221.

One corporation cannot become owner of any portion of capital stock of another corporation, unless authority to become such is clearly conferred by statute. *Franklin Bank v. Commercial Bank*, 36 Ohio St. 355. And a refusal by one bank to transfer on its books stock to another bank which is held by the latter as collateral security, is not a conversion. *Id.*

An incorporated company cannot subscribe to stock of another corporation. *Ry. Co. v. Iron Co.*, 46 Ohio St. 44.

An agreement between a corporation and one of its stockholders for the surrender of the latter's stock to the former is illegal. *Shaw v. Ohio Edison Installation Co.*, 19 B. 292.

An assignee of stock in railroad company, who tenders an unpaid installment, with interest, may compel the corporation to issue to him a stock certificate; and as against such an action the statute of limitations will begin to run from the time of such tender. *Iron R. R. Co. v. Fink*, 41 Ohio St. 321.

Purchase of stock by trustee for the company to be paid for with notes of the company, in consideration of the proposed retirement of two officers, is void, and those who attempted to sell did not cease to be stockholders. *Mer. Nat. Bank v. Overman Carriage Co.*, 17 C. C. 253.

Ohio corporation cannot buy in its own stock. *Halcomb v. Gibson*, 39 B. 380.

Where certificates of stock are required to be issued by the president and secretary, neither of whom is prohibited from holding stock, certificate issued to secretary is not notice sufficient to put party on inquiry as to whether he is rightfully owner, and one purchasing such certificate in the market without knowledge of any fraud in its issue becomes the owner, although it was fraudulently issued, which inquiry at the company's office would have disclosed. *Ry. Co. v. Citizens' Nat. Bk.*, 56 Ohio St. 351; apparently contrary, *Ry. Co. v. Third Nat. Bk.*, 1 C. C. 199.

See also *R. R. Co. v. Bank*, 24 B. 198, and 22 B. 248. For other questions arising from over issue of stock, see *Perin v. Railroad Co.*, 17 B. 261, and 18 B. 382.

Where a former officer of a railroad company has fraudulently issued stock and pledged it and other collaterals as security for his own debt, and the directors bought up such claims and collaterals for the purpose of realizing on the collaterals other than stock, and thereby canceling the stocks without paying *bona fide* holders for them; held, such action is not *ultra vires*, *R. R. Co. v. Duckworth*, 2 C. C. 518, affirmed in 21 B. 36.

The sale and transfer of a certificate of stock transfers that portion of the entire assets of the company which the certificate bears to the entire stock,

and no valid reservation of any portion of a future dividend can be made at the time of such transfer. *Marble v. Van Wert Nat. Bk.*, 3 C. C. 464.

The indorsement of a certificate in blank and delivery as a pledge estops the pledgor from asserting any title thereto against an innocent purchaser for value from the pledgee, although sold in violation of the pledge. *Krebs v. Forbriger*, 21 B. 313.

Purchase of treasury stock by stockholders for less than par may not render them liable for the difference where such purchases were made in good faith to aid the corporation and resulted in no profit to the stockholders. *Peter v. The Union Mfg. Co.*, 56 Ohio St. 181.

Net earnings are property of corporation until dividend is declared; and using scrip certificates, redeemable in the future in stock, is not a division; and such certificates are not taxable. *Adams v. Shields, Treas.*, 17 C. C. 129, affirmed 42 B. 262. See also *Clev. Trust Co. v. Lander, Treas.*, 43 B. 297.

Whether ordinary corporation may reserve a lien on stock for debts due from stockholders, see *Tomb v. Felch, Assignee*, 40 B. 186; *Stafford v. Produce Ex. Co.*, 61 Ohio St. 160, affirming 16 C. C. 50.

Issue of "treasury stock" by vote of directors for nominal consideration is illegal and void. *Straman v. No. Balt. Water Works Co.*, 8 C. C. 89.

Where a private corporation, organized under the laws of a foreign state, is permitted by the charter to have an office here, the right of the stockholders granted by statute of such state to inspect the books of the corporation will be enforced by mandamus. *Ohio v. Farmer*, 7 C. C. 429.

But in case of Ohio corporation remedy is by mandatory injunction—motive of stockholder immaterial. *Blymer v. Blymer Co.*, 5 N. P. 71 (Sup. Ct. Cin.); *Cin. Volksblatt Co. v. Hoffmeister*, 43 B. 258 (Sup. Ct.).

Remedy for refusal to issue certificate of stock in action against corporation for damages, or to enforce issue and delivery of certificate, in equity. *State v. Carpenter*, 51 Ohio St. 83; *Krohn v. Ry. & Bridge Co.*, 4 N. P. 270 (C. P.).

3254-1. Reissuing of lost certificates—

In case any certificate of stock in any corporation be lost or destroyed, the owner thereof may file his petition in the probate court of the county where the principal business office of such corporation is located in this state, setting forth a pertinent description of such certificate, and a full statement of the facts relating to such destruction or loss, including the fact that he is the owner of such certificate, and was at the time of its loss or destruction, and had not assigned, transferred, or disposed of the same, and that the same was not pledged to any one, or if so, stating to whom, and the facts relating thereto, and such petitioner shall make the corporation and any pledgee defendants to such proceeding, and shall serve a certified copy of such petition on some chief officer of such corporation, and on any such

pledge, on which copies the probate judge shall state over his signature when said petition will be heard, and said copies shall be served not less than twenty days before the hearing, and such petitioner shall also publish, for three consecutive weeks, in some newspaper published and of general circulation in the county where the proceeding is pending, and in the county where the petitioner resides the notice containing the substance and prayer of such petition immediately before the day of hearing, and stating when and where the same will be heard. 88 O. L. 336.

3254-2. How reissue effected—

If the probate court, upon the hearing, find that the foregoing provisions have been complied with, and that such described certificate has been lost or destroyed, and that such petitioner at that time was and is the owner thereof, an order shall be made that such corporation issue and deliver a new certificate of stock to such petitioner for the original amount and kind of stock, and in case, at the time of such loss or destruction of such original certificate, the certificate was pledged to anyone, and the pledgee yet has a claim against the same, then such order shall direct that such new certificate shall be delivered to such pledgee on such terms as the court may direct, and the corporation shall comply with said orders, and shall in no wise be prejudiced by complying with said orders, or by paying dividends on such new certificate, so long as it is not made known to it that such original certificate is in existence and owned by some person other than said petitioner; and all rights and liabilities attaching to said original certificate shall attach to said reissued certificate, while in force, but upon the production of the original certificate to such corporation by the owner or pledgee, such reissued certificate shall be canceled and surrendered, and be void, and executors and administrators, on behalf of estates of deceased owners of any such lost or destroyed certificates of stock, shall be entitled to proceed under this act and have all the rights and benefits thereof. 88 O. L. 336.

3255. Stock is personal property—

Shares of stock in any company shall be personal property, and when fully paid up shall be subject to levy and sale upon execution against the owner. 50 v. 274, § 5; S. & C. 276.

The interest of a stockholder may be reached by garnishee process served on corporation, and if the corporation is the attaching creditor, such process may be served upon itself; but if certificates have been pledged and delivered under absolute power of sale, the attachment reaches only the surplus after paying the pledgee, and if the pledgee does not sell the stock the court may order its sale, and ascertain and apply the surplus, and dividends follow the claims and are subject to same order of distribution. *Norton v. Norton*, 43 Ohio St. 509.

Stock in foreign corporation must be listed for taxation here if owner resides in Ohio. *Bradley v. Bauder*, 36 Ohio St. 28.

A stockholder's indebtedness to a national bank cannot be set off against the claims of a pledgee of the stock of the former, who received it in pledge to secure the payment of a loan made on the faith of such pledge without knowledge of the claims of the bank, or that it was insolvent. *McConville, Agent, etc., v. Means*, 21 B. 193.

Stock may be assigned in equity by delivery without indorsement. *Lawler v. Kell, Ex'rx*, 4 N. P. 218 (C. P.).

Transfer to fictitious person is void. *Krohn Ry. Co. v. Bridge Co.*, 4 N. P. 270 (C. P.).

§ 3256. May borrow money on bond and mortgage—

A corporation may borrow money, not exceeding the amount of its capital stock, and issue its notes or coupon or registered bonds therefor, bearing any rate of interest authorized by law, and may secure the payment of the same by a mortgage of its real or personal property, or both.

In *Bosche v. The Toledo Display Horse Co.*, 14 C. C. 289-293, it was held that a chattel mortgage executed without a formal vote of the directors was valid, where the money was to be used in carrying on its business and paying its debts. A serious query under this section is whether the stock must be subscribed or may a company borrow money equal to the authorized capital. The section seems to authorize companies to borrow to the extent of its capital paid in, or at least subscribed.

In *Smead v. Foundry Co. v. Chesbrough*, 3 O. D. 534, it was held that the president of the corporation has no power to mortgage its property, or to confess a judgment against it. For a discussion of this question, see 6 *Thompson on Corporations*, sec. 7561.

Where a corporation borrows money at usurious interest, the contract is void only as to the excess over the legal rate. *Larwell v. Hanover Savings Fund Society*, 40 Ohio St. 274.

§ 3257. May stipulate that its obligations may be converted into stock—

Upon the written assent of not less than three-fourths of the stockholders, representing at least three-fourths of the capital stock of the company actually paid, any company may borrow

money, not exceeding one-half of the capital stock actually paid in, on such security, by way of mortgage, or otherwise, as may be agreed upon, and at a rate of interest not exceeding that allowed by law to be contracted for, and may, in the instruments evidencing the contract stipulate that the holders of such instruments shall have the right to convert the amount borrowed, or any part thereof, into either common or preferred stock, such stock having been provided for by the proper action and certificate of the company; and any action of the directors for borrowing money, issuing bonds, or involving an expenditure of money, shall be by a ye and nay vote, and record thereof shall be made showing the vote of each director voting upon the question. 67 v. 26, §§ 1, 2, 3, 4.

§ 3258. Stockholders liable in an amount equal to their stock—

The stockholders of a corporation which may be hereafter formed, and such stockholders as are now liable under former statutes, shall be deemed and held liable, in addition to their stock, in an amount equal to the stock by them subscribed, or otherwise acquired, to the creditors of the corporation to secure the payment of the debts and liabilities of the corporation. 52 v. 44, § 78. S. & C. 310.

It is well settled that, unless they have received assets of the corporation which were liable to the payment of its debts, or have agreed to pay the debts, the stockholders of a corporation are not liable for the debts of the corporation, except when made so by charter or statute. *Carr v. Iglehart*, 3 Ohio St. 457. But see *State v. Sherman*, 22 Ohio St. 411.

Holders of preferred stock are liable equally with common stockholders. When plaintiff's claims have not been reduced to judgments, stockholders can interpose only such defenses as are open to the corporation. It is no defense that defendants became stockholders after liability to plaintiffs was incurred. The equities between the holders of stock by assignment and their assignors who are parties to the suit, may be adjusted in the final judgment. *R. R. Co. v. Smith*, 48 Ohio St. 219.

One who holds "stock in trust for another," named, is personally liable as a stockholder. The remedy under this section is cumulative. *Holcomb v. Gibson*, 39 B. 380 (Sup. Ct.); *Henkle v. Salem Mfg. Co.*, 39 Ohio St. 552.

If a stockholder sells stock as paid up when it is not, as between himself and vendee he is primarily liable for the debts of the company contracted while he held the stock. *Gates v. Tippecanoe Stone Co.*, 57 Ohio St. 60.

A holder of stock in an Ohio corporation, who transfers his stock after a corporate debt has been created, is not relieved from his statutory liability for such debt by an agreement for an extension of the time for its payment;

although such agreement be made by the corporation and creditor after such transfer, and without the knowledge or consent of the transferrer. *Boice v. Hodge*, 51 Ohio St. 236; *Painesville Nat. Bank v. King Varnish Co.*, 8 C. C. 563.

Nor is the vendor relieved from liability for debts contracted prior to actual transfer of stock, though subsequent to making contract for sale. *Biles v. Chas. S. Looker Co.*, 17 C. C. 538.

An act which authorizes the creation of a corporation, without providing for the liability of its stockholders to its creditors to an amount at least equal to the stock owned by each, is unconstitutional and void. *State v. Sherman*, 22 Ohio St. 411. And such liability may be imposed either by express provision, or by requiring of the stockholders such acts of organization, or other acts, as will subject them to the provisions of article thirteen, section three, of the constitution, which, to the extent of the amount of stock owned by each stockholder, is self-executing. *Id.*

This liability of stockholders is not a primary resource or fund for the payment of the debts of the corporation, but is collateral and conditional to the principal obligation which rests upon the corporation, and is to be resorted to by creditors only in case of the insolvency of the corporation, or when payment cannot be enforced against it by ordinary process. *Wright v. McCormack*, 17 Ohio St. 86.

As between stockholders, each is bound to contribute in proportion to his stock; but the liability of each is separate, and it, and the right arising out of it, is to, and for the exclusive benefit of, all the creditors. *Wright v. McCormack*, *supra*; *Umstead v. Buskirk*, 17 Ohio St. 113. And an assignment of this liability by the corporation, though for the mutual benefit of all its creditors, is therefore inoperative. *Id.*

A stipulation in a policy of insurance issued by an insurance corporation, limiting the time within which an action may be brought thereon, is not a limitation on the right of action of a creditor against stockholders to enforce this liability. *Davis v. Stewart*, 26 Ohio St. 643.

The individual liability of stockholders attaches in favor of creditors at the time the debt is contracted or the liability incurred by the corporation. *Brown v. Hitchcock*, 36 Ohio St. 667. Whether giving a renewal note is a new contract as affecting liability on transferred stock, discussed in *Wheeler v. Faurot*, 37 Ohio St. 26. Note here *Boice v. Hodge*, 51 Ohio St. 236. When an insolvent corporation makes an assignment for benefit of creditors, the statute of limitations begins to run from that time against the right to subject the statutory liability of stockholders. *Barrick v. Gifford*, 47 Ohio St. 180.

Where stock subscription book shows subscriptions were made after articles of incorporation were filed, it will not be permitted to show they were made before such filing. *Royce et al. v. Tyler*, 2 C. C. 175.

The statutory liability cannot be enforced in favor of one stockholder who voluntarily pays the debts of the corporation, against a stockholder who was solvent and within the same jurisdiction at the time of such payment. *Burr, Adm'r, v. Bates, Adm'r*, 3 C. C. 1.

Attachment cannot be based on second liability under Ohio statute. *Cleveland Gas & Electric Co. v. Mt. Gilead Electric Co.*, 6 N. P. 218.

Action to enforce individual liability of stockholders must be brought

within six years after the cause of action accrued. *Hawkins v. Furnace Co.*, 40 Ohio St. 507.

In an action to enforce stockholders' liability, where all were not served, but it did not appear that all could not be served: *Held*, error to assess whole indebtedness on those served; *Held*, error also to give judgment for some of the stockholders releasing them from assessment, upon the finding that they did not own stock at the time the liability sought to be enforced accrued, without finding further that the stock held by these defendants had not been sold by the corporation prior to the time such liability accrued. *Bonewitz v. Bank*, 41 Ohio St. 78.

A stockholder who in good faith transfers stock to one afterward becoming insolvent, is liable for such portion of unpaid debts, existing while he held stock, as equals the proportion of his stock to entire stock held by solvent stockholders within the jurisdiction, liable for the same debts, to be ascertained at time judgment is rendered. *Harpold v. Stobart*, 46 Ohio St. 397; so also where such transferee is insolvent at the time of transfer. *Bank v. Bank*, 43 B. 418.

Where stockholders covenant to indemnify an indorser of corporation paper in proportion to the amount of stock held by them, their liability is analogous to that of a surety. *Wise v. Miller*, 45 Ohio St. 388.

As to subjecting stockholders' liability arising under statute of foreign state, see *Wyatt v. Moorehead*, 4 N. P. 435 (C. P.); *Judson v. Stewart*, 7 N. P. 160 (C. P.).

The liabilities provided for include those sounding in to it. *Rider v. Fritchey*, Adm'r, 49 Ohio St. 285, affirming 3 C. C. 89.

The liability in corporations *de jure* and *de facto* is the same. *Rowland v. Meader Furniture Co.*, 38 Ohio St. 269.

The additional liability of a stockholder in a national bank may be set off against the dividend due from the receiver upon such stockholder's deposit account, and it makes no difference that the claim to the dividend has been assigned to others, or that the amount of the stockholder's liability has not been ascertained. *Brownell v. Armstrong, Receiver*, 20 B. 465.

§ 3259. The term "stockholders" defined—

The term "stockholders," as used in the preceding section, shall apply not only to such persons as appear by the books of the corporation to be such, but to any equitable owner of stock, although the stock appears on the books in the name of another.

A stockholder may in good faith sell or give his stock to an insolvent, although the corporation is insolvent; and after transfer on the corporation books such former owner ceases to be liable for future indebtedness. *Peter v. The Union Manf'g Co.*, 56 Ohio St. 181.

The pledgee of stock may sell same as against a receiver of the assets of the pledgor, on notice, it being admitted that a portion of the claim is owing, but the amount being in dispute. *Harrison v. Friend*, 1 N. P. 39 (C. P.).

In *McHenry et al. v. N. Y. P. & O. R. R. Co.*, 13 B. 36, United States

Circuit Court N. D. Ohio E. D., rule 94 of Sup. Ct. U. S., providing that a bill brought by stockholders in a litigation which should ordinarily be brought by the corporation must show particularly their efforts to obtain redress from the corporation, etc., was strictly applied, and held, upon the facts in that case, that where the railroad was in substance and fact the property of the bondholders, the stockholders have no such interest as entitle them to bring such suit; per Baxter. J.

Where upon sale of stock an entry of transfer was made by the secretary in a book, but no transfer was made on the stock book, although intended by all that such transfer should be made, and original owner appeared by stock book at time debts accrued and trial occurred to be still the owner, although the company had treated purchaser as the owner, the original owner was held liable to creditors. *Harpold v. Stobart*, 46 Ohio St. 397.

To avoid stockholders' liability, the transfer must appear on the stock book, or, in absence of such book, on the stub of the stock certificate. *Harrick v. Wardwell*, 58 Ohio St. 294.

The equitable owner of stock may sue corporation to establish his rights, though he is not a stockholder of record. *Larwill v. Burke*, 19 C. C. 449.

The pledgee of stock, which is not transferred on the company's books, and who exercised no acts of ownership over the same, is not a stockholder. *Henkle v. Salem Manf'g Co.*, 39 Ohio St. 547. Nor is a legatee of stocks not transferred nor accepted. *DeCamp v. Levoy*, 19 C. C. 335.

The owner of stock is liable for the debts of the company existing after he became a stockholder, although the debts were created before. *Barrick v. Gifford*, 47 Ohio St. 180.

§ 3260. Complaint for enforcement of liability—

Whenever any creditor of a corporation seeks to charge the directors, trustees or other superintending officers of a corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose in any common pleas court which possesses jurisdiction to enforce such liability. 94 O. L. 309.

Before the enactment of this section, it was held in *Wright v. McCormack*, and *Umstead v. Buskirk*, *supra*, that the action by a creditor to enforce the liability of stockholders should be for the benefit of all the creditors, and against all the stockholders, and the corporation should be a party; and that stockholders whose liability is sought to be enforced may insist on their co-stockholders being made parties, for the purpose of a general account, and to enforce from them contribution. See, also, *Wheeler v. Faurot*, 37 Ohio St. 26, that it is error to refuse to make assignees of stock parties.

And where transferee of stock is not a party to such suit, it is not error to adjudicate as between other stockholders who are parties and creditors, and continue the case as to liability of vendor and vendee of stock as between themselves and creditors; and interest may be included from beginning of suit, although thereby amount of stockholder's original liability may be exceeded. In such case court may order plaintiff's attorney paid out of pro-

ceeds of judgment. If, by reason of insolvency or nonresidence, the amount due from any stockholder is not collectible, assignor of stock may be charged with deficiency. See this case also for facts estopping stockholders from questioning jurisdiction of appellate court. *Mason v. Alexander*, 44 Ohio St. 318.

If a corporation has some property subject to levy and sale, and continues to transact business, suit to subject statutory liability of stockholders cannot be brought until execution is returned unsatisfied. *Barrick v. Gifford*, 47 Ohio St. 180. Such action is in nature of a demand for all, and saves the running of the statute of limitations as against all creditors who come in and assert their claims before final determination of the action. *Id.*

Some interesting questions of practice in subjecting liability of stockholders are decided in *Hardman v. Cin., etc., Ry. Co.* (Ham. Com. Pleas), 15 B. 164, and 18 B. 264. Also in *Bullock v. Kilgour*, 39 Ohio St. 543; *R. R. Co. v. Smith*, 25 B. 179; *Turnbull v. Pomeroy Salt Co.*, 24 B. 133; *Peter v. Farrel Foundry and Machine Co.*, 53 Ohio St. 534; *Balt. & Ohio R. R. Co. v. Smith*, 54 Ohio St. 562; *Hamilton v. Home Ins. Co.*, 1 N. P. 329 (C. P.); *Northern Nat. Bank v. Rolling Mill Co.*, 2 N. P. 260 (C. P.); *Swan v. R. R. Co.*, 3 N. P. 225 (C. P.); *Smith v. Johnson*, 57 Ohio St. 486; *Herrick v. Wardwell*, 58 Ohio St. 294; *Berger v. Bank*, 5 N. P. 176 (C. P.); *Cleveland, etc., Co. v. Collins*, 19 C. C. 247, reversing 6 N. P. 218; *Younglove v. Lime Co.*, 49 Ohio St. 663; *DeCamp v. Levoy*, 19 C. C. 335; *Hull v. Standard Co.*, 7 N. P. 157; *Bank v. Bank*, 43 B. 418.

Statute of limitations commences to run in such actions when company is insolvent and claim is determined and enforceable against stockholders. *Id.*

To maintain such action, not necessary first to present claim on account of such liability to personal representative of deceased stockholder. *Wanz v. The Park Hotel Co.*, 1 C. C. 105.

In action to enforce statutory liability, if it is alleged that the company is insolvent, has ceased to do business and has made an assignment for benefit of creditors, it is not necessary to allege recovery of a judgment and return of execution unsatisfied. *Morgan v. Lewis*, 46 Ohio St. 1; *Barrick v. Gifford*, 47 Ohio St. 180.

Where alleged stockholder defends upon the ground that he ceased to be a stockholder before the debts complained of were contracted, he may show that he received his stock in exchange for his interest in a furnace and that he afterward transferred his stock to the company and accepted from it a deed for the furnace. *Morgan v. Lewis*, *supra*.

The enforcement of the Ohio second liability in foreign jurisdictions was carefully discussed in *State National Bank v. Sayward*, 91 Fed. 443, in which the court held that the corporation was an indispensable party, in the absence of which a single creditor could not maintain an action, although ostensibly for the benefit of all.

Instructive decisions were rendered by the U. S. Supreme Court, in *Whitman v. Oxford National Bank*, 176 U. S. 559, and *Hancock National Bank v. Farnum*, 176 U. S. 640, establishing the proposition that under section 1, article 4, of the constitution of the United States, requiring full faith and credit to be given in each state to the judicial proceedings of every other state, judgments to enforce the second liability against stockholders shall

have the same effect in the foreign jurisdiction as they have in the state where the corporation was formed.

See Aultman's Appeal, 98 Pa. St. 505; *Railroad Co. v. Gebhard*, 109 U. S. 527.

These various decisions suggest the adoption, in Ohio, of the practice, in subjecting the second liability, of making all stockholders, foreign and domestic, parties, serving all actually or constructively, fixing the liability, and appointing a receiver to collect the various amounts thus determined, authorizing such receiver to bring suits to enforce the liability in any jurisdiction where the stockholders may be found. This is authorized by sections 3260 to 3260f, inclusive.

Bankruptcy. Under section 63, Bankrupt Act, 1898, it becomes an interesting question to what extent the second liability is affected through bankruptcy proceedings by or against stockholders. Authoritative decisions have not yet appeared, but cases under the act of 1867 have some application.

In *James v. Atlantic Delaine Co.*, Fed. Cas. No. 7179, it was held: "The statutory liability of the stockholders of a corporation, for its debts, is not such a claim as can be proved in bankruptcy against them."

In *American Mill Co. v. Garrett*, 10 U. S. 288, it was held that the assignee in bankruptcy assumed no liability as stockholder, upon acquiring title to the stock, on the well recognized principle that "assignees are not bound to accept property of an onerous or unprofitable character." 110 U. S. 295.

Applying these principles to section 63, act 1898, second liability claims will not be affected by bankruptcy proceedings, unless, at the time thereof, the cause of action against the stockholder, and in favor of creditors, has accrued. After such accrual the bankruptcy would release the stockholder, on the ground that his obligation, under the statute, is an "implied contract." *Hawkins v. Furnace Co.*, 40 Ohio St. 507, 514.

This liability may be enforced by a creditor, notwithstanding the corporation has made an assignment for the benefit of creditors, the assignee consenting. *Painesville Nat. Bk. v. King Varnish Co.*, 8 C. C. 563, affirmed on this point in 37 B. 223.

Where solvent stockholders had loaned money to the company to enable it to continue its business, for which they took the company's notes, but the company made an assignment, and afterwards, one of the stockholders transferred the note held by him and past due, to his creditors—*Held*, that such transfer of the note was subject to any assessment thereafter made against the stockholder to enforce his individual liability. *Barber v. Leader Sew. Mach. Co.*, 7 C. C. 411.

In an action to enforce statutory liability, a receiver may be appointed to collect and distribute the fund, who may, under the authority of the court appointing him, prosecute actions in his own name as such receiver to enforce payment of judgments rendered for such statutory liability. *Zieverink v. Kemper, Receiver*, 50 Ohio St. 208.

Where property of corporation has been placed in hands of assignee in bankruptcy, or insolvency, or of receiver on dissolution to wind up its affairs, or in some such way put in process of application to pay its debts, creditors may sue stockholders without reducing claims to judgment against

corporation, and statute will run in favor of stockholders from such time; but insolvency in the sense of insufficient property to pay debts, or appointment of receivers to carry on business, is not sufficient. *Younglove v. Lime Co.*, 49 Ohio St. 663; *Bronson v. Schneider*, 49 Ohio St. 438; *Peter v. The Farrell Foundry and Machine Co.*, 53 Ohio St. 534.

§ 3260a. Action by court—Receiver—

The court shall proceed thereon, as in other cases, and, when necessary, shall cause an account to be taken of the property and obligations due to and from such corporation, and may appoint one or more receivers. 94 O. L. 359.

§ 3260b. Enforcement of liability upon insolvent corporation—

If, on the coming in of the answer or upon the taking of such account, it appears that such corporation is insolvent, and has not sufficient property or effects to satisfy such creditor, the court may proceed to ascertain the respective liabilities of the directors, officers and stockholders, and enforce the same by its judgment, as in other cases. 94 O. L. 359.

§ 3260c. Nonresident stockholders—Collection of unpaid installments—

In all cases in which the directors or other officers of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge its debts, the court shall give notice to nonresident stockholders as provided in sections *five thousand and forty-eight, five thousand and forty-nine, five thousand and fifty, five thousand and fifty-one and five thousand and fifty-two* of the Revised Statutes, and shall first proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the company. 94 O. L. 359.

§ 3260d. Liabilities of officers and stockholders—Prosecutions by receiver—

If the debts of the company remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment, as in other cases. The court may authorize and direct the receiver to prosecute such

action in his own name as receiver, as may be necessary, in other jurisdictions to collect the amount found due from any officer or stockholder. 94 O. L. 359.

§ 3260e. Notice to creditors—

Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provisions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published, in such manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment. 94 O. L. 359.

§ 3260f. Distribution of assets of insolvent corporation—

Upon a final judgment in any such action against an insolvent corporation, the court shall cause a just and fair distribution of the property and assets of such corporation or the proceeds thereof to be made among its creditors. 94 O. L. 359.

§ 3261. Trustees personally liable for all debts—

The trustees of a corporation created for a purpose other than profit, shall be personally liable for all debts of the corporation by them contracted. 52 v. 44, § 78; S. & C. 310.

The declaration in the articles of incorporation of a chamber of commerce that it "is formed not for profit" is not inconsistent with a provision for capital stock, nor with a declaration that it is intended to promote the prosperity of the city in which it is located; and the trustees or directors of such corporation are personally liable for all its debts by them contracted. *Snyder v. Chamber of Commerce*, 53 Ohio St. 1.

This does not cover loss under a certificate of membership and insurance under sec. 3686, even though such certificate was in part *ultra vires*, if issued in good faith. *Manf'rs Fire Ass'n v. Lynchburg Drug Mills*, 8 C. C. 112.

Where indebtedness is incurred in behalf of the corporation and for its benefit, and afterward the trustees authorized the giving of a note of the corporation for the debt, but the creditor refused to take it, and took the note of the individuals, which on renewal later was changed into the note of the corporation, the trustees are personally liable. *Mahaffy v. Rogers*, 10 C. C. 24; affirmed in 37 B. 292.

Trustees are not liable for money lost by failure of a bank where the trust funds are deposited to their credit as trustees (in this case a treasurer), the bank being reputable, etc. *Odd Fellows Ben. Ass'n v. Ferson*, 3 C. C. 84.

§ 3262. Increase of capital stock—

A corporation for profit, after its original capital stock is fully subscribed for, and an installment of ten per cent on each share of stock has been paid thereon, or a corporation not for profit, having a capital stock, may increase its capital stock or the number of shares into which its capital stock is divided, by the unanimous written consent of all original subscribers, if done prior to organization, and after organization then by a vote of the holders of a majority of its stock, at a meeting called by a majority of its directors, at least thirty days' notice of the time, place and object of which has been given by publication in some newspaper of general circulation, and by letter addressed to each stockholder whose place of residence is known; or such increase may be made at any meeting of the stockholders at which all the holders of such stock are present in person, or by proxy, and waive in writing such notice by publication and by letter; and also agree in writing to such increase, naming the amount of increase to which they agree; and a certificate of such action of the corporation shall be filed with the secretary of state. 90 O. L. 141.

Agreement to take shares of increase stock may be enforced, though whole stock never taken. *Clarke v. Thomas*, 34 Ohio St. 46.

When irregularities in proceedings to increase stock will not defeat action on subscription. *Ib.*

Court may order receiver to collect such proportion of subscription as is necessary to pay debts. *Ib.*

§ 3263. May increase stock by preferred stock—

Upon the assent, in writing, of three-fourths in number of the stockholders of any company, representing at least three-fourths of the capital stock of the company, the company may issue and dispose of preferred stock, and may stipulate that the holders of such stock shall be entitled to a dividend not exceeding six per centum per annum, out of the annual profits of the company, in preference to all other stockholders, and that they may convert such preferred stock into common stock of the company at their election; and upon any such increase of stock, a certificate shall

be filed with the secretary of state, as provided in the preceding section. 71 v. 69, §§ 1, 2.

Holders of preferred stock are liable under statutory liability. R. R. Co. v. Smith, 48 Ohio St. 219.

Under the act of March 25, 1870, holders of "preferred stock," so called, were held not to be stockholders, but preferred creditors. Burt v. Rattle, 31 Ohio St. 116.

§ 3264. Reduction of capital stock—

The board of directors of any such corporation may, with the written consent of the persons in whose names a majority of the shares of the capital stock thereof stands on the books of the company, reduce the amount of its capital stock and the nominal value of all the shares thereof, and issue certificates therefor; but the rights of creditors shall not be affected or impaired thereby; and a certificate of such action shall be filed with the secretary of state. 83 v. 134.

§ 3265. Change of bonds authorized—

A corporation which has lawfully issued, or may hereafter lawfully issue, its registered or coupon bonds, may, upon the request of the holder thereof, change such registered bonds into coupon bonds, or such coupon bonds into registered bonds, either by substitution, or proper indorsement thereon; and all liens, securities, and rights which existed or accrued to such original bonds shall continue to such substituted or indorsed bonds, the same as if such substitution or indorsement had not been made. 73 v. 123, §§ 1, 2.

§ 3266. Property to be employed only for objects of corporation—

No corporation shall employ its stocks, means, assets, or other property, directly or indirectly, for any other purpose whatever than to accomplish the legitimate objects of its creation. 50 v. 274, § 73; S. & C. 309.

Bill or note made or received by a corporation is *prima facie* within its corporate powers. Straus v. Eagle Ins. Co., 5 Ohio St. 59.

One incorporated company cannot subscribe to stock of another company. Ry. Co. v. Iron Co., 46 Ohio St. 44.

Foreign corporations may do business in this state through principles of comity. Petroleum Co. v. Weare, 27 Ohio St. 343; Telegraph Co. v. Mayer, 28 Ohio St. 522; Lewis v. Bank of Kentucky, 12 Ohio, 132. And may sue

and be sued here same as in the states where they were created. *Smith v. Sewing Machine Co.*, 26 Ohio St. 562. And as to jurisdiction of federal courts, foreign corporations are regarded as citizens of the states in which they are organized. *Shelby v. Hoffman*, 7 Ohio St. 451; *Railroad Co. v. Corry*, 28 Ohio St. 208.

Foreign corporation may take real estate in Ohio by devise, although disabled to do so in its home state. *Am. Bible Soc. v. Marshall*, 15 Ohio St. 537.

Foreign corporation may be ousted by proceedings in *quo warranto* from exercising its franchises in contravention of the laws of this state. *State v. W. U. M. Life Ins. Co.*, 47 Ohio St. 167; *State v. Ins. Co.*, 49 Ohio St. 440.

Where a corporation organized under a special act, with capital stock, but not for profit and having made no profits, issued certificates of "shares of the real estate property of the college, drawing an interest of six per cent.:" *Held*, that an action for a money judgment for interest on such shares is not maintainable, the only property of the corporation being indispensable to its existence. *Ohio College, etc., v. Rosenthal*, 45 Ohio St. 183.

§ 3267. Change in number of directors—

A company may, by a vote of a majority of its stock, at any regular meeting of the company, increase the number of directors to any number not greater than fifteen, or decrease the number before or after such increase to any number not below five; provided, that at any stockholders' meeting, called in the manner and as provided in section *three thousand two hundred and forty-six*, and notice of which has been given in accordance with the provisions thereof, any corporation, incorporated for manufacturing purposes, may, by a vote of a majority of its stock, increase the number of its directors as hereinbefore provided, who shall hold their offices respectively until the next annual election for directors, and until their successors are elected and qualified. 83 O. L. 163.

§ 3268. Annual statement—

Every corporation organized under the laws of this state shall make a statement annually of its financial condition, setting forth its assets and liabilities, and shall furnish to each stockholder a true copy of the same, together with a list of the stockholders thereof and their place of residence.

§ 3269. When provisions of this chapter do not apply—

The provisions of this chapter do not apply when special provision is made in the subsequent chapters of this title, but the

special provisions shall govern, unless it clearly appear that the provisions are cumulative; and no corporation shall, by anything in this title, be relieved from any liability in actions now pending, or causes of action heretofore accrued.

§ 3269-1. Dividends from surplus profits only—

It shall not be lawful for the directors of any corporation organized under the laws of this state to make dividends except from the surplus profits arising from the business of the corporation. 85 O. L. 182.

"Dividends" is a term also applicable to a distribution of part or whole of the capital stock. *Larwill v. Burke*, 19 C. C. 449.

Irregularity in dividing property as dividend directly among the stockholders, or other acts injurious to no one, though irregular, may be valid if acquiesced in. *Larwill v. Burke*, 19 C. C. 513.

§ 3269-2. Unpaid interest not included in profits—

In the calculation of the profits of any corporation previous to a dividend, interest then unpaid, although due, on debts owing to the company, shall not be included. 85 O. L. 182.

§ 3269-3. Rules for ascertaining surplus profits—Prohibiting advertisement of capital not subscribed and paid in—

In order to ascertain the surplus profits, from which alone a dividend can be made, there shall be charged in the account of profit and loss, and deducted from the actual profits—

1. All the expenses paid or incurred, both ordinary and extraordinary, attending the management of the affairs and the transaction of the business of the corporation.
2. Interest paid, or then due or accrued, on debts owing by the corporation.
3. All losses sustained by the corporation, and in the computation of such losses, all debts owing to the corporation shall be included which shall have remained due without prosecution, and no interest having been paid thereon for more than one year, or on which judgment shall have been recovered, and shall have remained for more than two years unsatisfied, and on which no interest shall have been paid during that period; and no such corporation shall advertise a larger amount of capital stock than has actually been subscribed and paid in; also, shall not adver-

tise a greater dividend than what has been actually earned and credited or paid to its stockholders or members. 86 O. L. 228.

§ 3269-4. Penalty for violation of § 3269-3—

Every director who shall violate, or be concerned in violating, any provision in the preceding sections of this act contained, shall be liable personally to the creditors and stockholders respectively of the corporation of which he shall be a director, to the full extent of any loss they may respectively sustain from such violation. 85 O. L. 182.

**COMMISSIONER OF RAILROADS AND TELE-
GRAPHS.**

SECTION

- 245. How appointed, and term; who eligible.
- 246. Bond.
- 247. Duties as to railroad bridges, tracks, or other structures.
- 247a. Gates and flagmen, at what public road crossings; penalty.
- 247b. How, when, where built; keepers of, etc.; penalties.
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SECTION

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- 254. Annual reports of telegraph companies; penalty.
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- 262. How prosecutions carried on.
- 263. Civil action for penalty; by whom brought.
- 264. Annual report of commissioner.
- 265. Moneys collected shall be paid into the state treasury; fees of prosecuting attorneys.

§ 245. How appointed, and term—Who eligible—

A commissioner of railroads and telegraphs shall be appointed by the governor, by and with the advice and consent of the senate; and he shall hold his office for two years; no person is eligible to the office who is an officer or employe of a railroad

company, or who owns or is interested in the stock or bonds of a railroad company. 64 v. III, § 1; S. & S. 76.

§ 246. His bond and oath of office—

The commissioner, before entering upon the discharge of his duties, shall give bond to the state in the sum of five thousand dollars, with two or more sureties, to the acceptance of the governor, conditioned for the faithful performance of his duties; which bond, with his oath of office and the approval of the governor indorsed thereon, shall be deposited with the secretary of state. 64 v. III, § 2; S. & S. 76.

§ 247. Duty to examine tracks, bridges, etc., supposed to be dangerous—Shall prescribe rate of speed for passing over same, or wholly stop the trains from passing over same—Punishment of officers and others for disobeying his orders, and penalty against company—

When the commissioner has reasonable grounds to believe, either on complaint or otherwise, that any of the tracks, bridges, or other structures of any railroad in this state are in a condition which renders them, or any of them, dangerous, or unfit for the transportation of passengers, he shall forthwith inspect and examine the same; and if, on such examination by himself or his agent, he is of opinion that any of such tracks, bridges, or other structures are unfit for the transportation of passengers with safety, he shall immediately give to the superintendent, or other executive officer of the company operating such road, notice of the condition thereof, and of the repairs or reconstruction necessary to place the same in a safe condition; and he may also prescribe the rate of speed for trains passing over such dangerous or defective track, bridge, or other structure, until the repairs or reconstructions required are made, and the time within which such repairs and reconstructions must be made; or if, in his opinion, it is needful and proper, he may forbid the running of passenger trains over such defective track, bridge, or other structure; and if a superintendent or other executive officer receiving such notice and order neglects for two days after receiving the same to direct the proper subordinate officers to run the passenger trains over such defective track, bridge, or other structure, at a speed not greater than that so prescribed, or if the running of

passenger trains is so forbidden, then to stop running passenger trains over the same; or if any engineer, conductor, or other employe knowingly disobeys such order, every superintendent, officer, engineer, conductor, or employe, so offending, shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the jail for any period not exceeding one year, or both, at the discretion of the court; and the company operating such road, if it neglects or without good cause fails to make the repairs or reconstruction prescribed by the commissioner within the time by him limited, shall for each day that such repair or reconstruction is delayed beyond the time prescribed, forfeit and pay to the state the sum of one hundred dollars. 64 v. 111, § 6. S. & S. 77.

§ 247a. Gates, alarm-bells, devices or flagmen at dangerous crossings—Penalty—

When, in the opinion of the commissioner of railroads, the public safety requires that a gate or gates, automatic alarm-bell, or other mechanical device be erected and maintained at any place where a public road or street is crossed at the same level by any railroad, and which crossing has been declared by said commissioner to be a dangerous one, or that a flagman be stationed and maintained at such dangerous crossing, he shall give the superintendent, manager or other officer in charge of such railroad, a written notice that the same is required, and such company, person or corporation owning or operating such railroad shall erect or station the same within such time thereafter as said commissioner shall prescribe. Any company, person or corporation neglecting or refusing to erect or maintain such gate or gates, automatic alarm-bell, or other mechanical device, or to maintain such flagman, when so required as aforesaid, shall forfeit and pay to the state, for every such neglect or refusal, the sum of one hundred dollars, and the further sum of ten dollars for every day while such neglect or refusal shall continue. 91 O. L. 353.

§ 247b. Regulations as to such gates, bells, devices or flagmen—

All gates, bells or devices, which by the provisions of this act are under the direction of the commissioner of railroads, shall be built in such a manner, and within such a time, and of such ma-

terial as shall be approved by the commissioner of railroads, and shall be located on the highway or street, on one or both sides of the railroad track or tracks as the commissioner may deem the public safety to require, and shall be so constructed as, when closed, to obstruct and prevent any passage across such railroad or railroads from the side on which the gate may be located; or said bell shall be made to ring before the approach of each and every train of cars or of a locomotive within three hundred feet of such crossing, or more, according to the speed of the train, and continue to ring until the train of cars or the locomotive shall have reached the crossing. There shall be a person in charge of every such gate, and it shall be his duty to close the same at the approach of every train of cars, or of a locomotive, and to keep it open at all other times. In case an automatic alarm-bell, or other mechanical device, shall be required at any such crossing, it shall be the duty of the railroad company at all times to keep such bell or device in good working order. For every neglect of such duty such person or railroad company, upon conviction thereof, shall pay the sum of twenty-five dollars. When more than one railroad crosses a public highway or street at such dangerous crossing, the expense incurred in the erection and maintenance of gates, bells or device provided for in this section, and of the necessary gate-keepers, or of a flagman, shall be shared equally by the railroad companies alongside whose tracks the gates, bells or device shall be located. Provided that an automatic alarm-bell, or other mechanical device as provided for in this and the preceding section, shall not be erected within the limits of any city of the first class or of any city of the first, second, third and fourth grades of the second class, upon the order of the commissioner of railroads and telegraphs; but nothing herein contained shall prohibit any railroad company from using such automatic alarm-bell or other mechanical device, if it desire, at any public railroad crossing not declared dangerous by said commissioner of railroads and telegraphs; and provided further, that where a gate or gates has or have been erected, and is or are maintained by the railroad company, or where a flagman has been stationed, and is maintained by the railroad company, shall not be abandoned, and any automatic alarm-bell or other mechanical devices be substituted therefor. 91 O. L. 363.

[§ 247c. This is an act referring to Hamilton county only. 91 O. L. 350.]

§ 247d. When railroad engines and trains may legally pass over grade crossing or bridge without stopping—

When in case two or more railroads or a railroad and an electric railroad crossing each other at a common grade, or any railroad crossing a stream by a swing or draw-bridge shall, by a system of interlocking, or by other works or fixtures, to be erected by them, or either of them, render it safe for engines or trains to pass over such crossing, or bridge, without stopping, and such system of interlocking works or fixtures shall first be approved by the commissioner of railroads and telegraphs, and a plan of such interlocking works or fixtures, for such crossing or bridge, designating the plan of crossing shall have been filed with such commissioner, then and in that case, it is hereby made lawful for the engines and trains of such railroad or railroads, to pass over such crossing or bridge, without stopping, any law, or the provisions of any law, now in force to the contrary notwithstanding, and all such other provisions of law contrary thereto are hereby declared not to be applicable in such case; provided, that the said commissioner shall have and is hereby given power in case such interlocking system, or other fixtures, shall, in his judgment, prove to be unsafe or impracticable, to order the same discontinued, opportunity first being given the person or company operating the same to be heard before said commissioner as to the propriety of such order. In case such order is made and enforced, the existing statutes relative to stopping at crossings shall apply until such times as a device approved by said commissioner is substituted. 92 O. L. 315.

§ 247e. Petition for safety devices and procedure thereon—

That in case where the tracks of two or more railroads, or the tracks of a railroad and an electric railroad, cross each other at a common grade in this state, any company owning any one of such tracks, whose managers may desire to unite with others in protecting such crossing with interlocking, or other safety devices, and shall be unable to agree with such others on the matter, may file with the said commissioner a petition stating the facts of the situation and asking said commissioner to order such crossing to be protected by interlocking, or other safety devices; said petition shall be accompanied by a plan showing the location of all tracks and switches, and upon the filing thereof notice shall

be given each company or persons owning or operating any track involved in such crossing, and the said commissioner shall thereupon view the site of such crossing and shall, as soon as practicable, appoint a time and place for the hearing of such petition. At the time and place named for hearing, unless the hearing is for good cause continued, said commissioner shall proceed to try the question of whether or not the crossing shall be protected by interlocking or other safety devices, and shall give all companies and parties interested an opportunity to be fully heard; and after such hearing said commissioner shall enter an order upon the record book, or docket, to be kept for the purpose, granting or denying such petition; and in case the same is granted, such order shall prescribe the interlocking or other safety devices for such crossing and all other matters which may be deemed proper to the efficient protection of such crossing, and in such order the commissioner shall designate the proportion of the cost of the construction of such plant, and the expense of maintaining and operating the same, which each of the companies or persons concerned shall pay, and shall also fix the time within which such appliance shall be put in, such time, however, not to exceed ninety days from the making of such order. 92 O. L. 315.

"Interlocking systems" discussed. *Ry. Co. v. Ry. Co.*, 5 N. P. 53 (C. P.)

§ 247f. Compulsory interlocking—

In case, however, one railroad company or an electric railroad company shall hereafter seek to cross at grade with its track, or tracks, the track or tracks, of another railroad, the railroad company, or the electric railroad company, seeking to cross at grade shall be compelled to provide interlocking or other safety devices put in to the satisfaction of the said commissioner of railroads to protect such crossing, and to pay all costs of such appliance, together with the expense of putting them in. The future maintenance and operation thereof shall be equally apportioned between the two or more roads by the said commissioner of railroads and telegraphs; provided, this act shall not apply to crossings of side tracks only. 93 O. L. 334.

§ 247g. When railroad engines and trains and electric cars may legally pass over crossings without stopping—

Whenever interlocking or other safety devices are constructed and maintained in compliance with section *two* or *three* of this act then and in that case it shall be lawful for the engines and trains of such railroad or railroads and the cars of such electric railroad to pass over said crossing without stopping; any law or the provisions of any law, now in force to the contrary notwithstanding; and all such other provisions of law contrary thereto are hereby declared not to be applicable in such case. 92 O. L. 315.

§ 247h. Penalty for refusal or neglect to comply with order—

Any person, company or corporation refusing or neglecting to comply with any order made by the said commissioner of railroads and telegraphs in pursuance of this act shall forfeit and pay a penalty of five hundred dollars per week for each week of such refusal and neglect, the same to be recovered in an action of debt in the name of the State of Ohio, and to be paid, when collected, unto the county treasurer of any county in which such suit may be tried. 92 O. L. 315.

§ 248. Shall examine into alleged violations of law by railroad, its officers, agents, or employees—

When the commissioner, upon complaint or otherwise, has reason to believe that any railroad company, or any officer, agent, or employe of any railroad company, has violated, or is violating, any of the laws of the state, he shall examine into the matter. 64 v. 111, § 5; S. & S. 76.

§ 248a. Duty of, as to differences between citizens and common carriers—

When the commissioner, on complaint, or otherwise, has reason to believe that differences have arisen between citizens of the state and any corporation operating as a common carrier within the state, he shall examine into the matter, and shall report his findings to the general assembly, if in session, otherwise to the governor. 83 v. 206.

**§ 249. Office in the state-house—May appoint a clerk—
Powers and duties of the clerk—**

The office of the commissioner shall be in the state-house ; and he may appoint a clerk, which appointment must be evidenced by the certificate of the commissioner ; the clerk shall discharge such duties as are assigned to him by the commissioner, and he may issue subpoenas for witnesses and administer oaths in all matters pertaining to the duties of the office of commissioner. 68 v. 55, § 3.

§ 250. Commissioner may pass free over all railroads—

The commissioner shall have the right of passing, in the performance of his duties, on all the railroads within the state, and upon all trains, and any part thereof, free of charge. 64 v. 111, § 4 ; S. & S. 76.

**§ 250-1. Additional statements, etc., required of railroad
and telegraph companies—**

Every railroad company and telegraph company incorporated or doing business in this state, or which shall hereafter become incorporated and do business under any general law in this state, shall, in addition to the reports already required by law, on or before the first day of September in each year, make and transmit to the commissioner of railroads and telegraphs a full and true statement under oath of the proper officers of said corporation, of the affairs of the said corporation as the same existed on the 30th day of the preceding June. Such statement shall be in the form and manner as may be prescribed by the said commissioner of railroads and telegraphs. The commissioner shall prepare and furnish each railroad company, or to each organization having one or more railroads in charge, and to each telegraph company or general manager thereof in the state, blank forms for making the report required herein, and the said commissioner may at any time make and propound to such railroad companies any additional interrogatories which to him may seem necessary. When any report is defective, or appears to be erroneous, the said commissioner shall notify the corporation to amend the same in the matter or matters named and make return of the same within fifteen days. Every railroad corporation shall, within a reasonable time after their road shall be constructed, and at any other time when required by said com-

missioner, cause to be made a map and profile thereof and file the same with the commissioner ; every such map shall be drawn on a scale and certified and signed by the president or engineer of such corporation. Every railroad company and telegraph company shall make out under oath and file with said commissioner of railroads and telegraphs, on or before the first day of September of each year, a true list of the names of each and every stockholder, giving the number of shares owned by such stockholder, together with his post-office address.

§ 250-2. Expenses to be borne by railroad companies—

That for the purpose of maintaining the department of commissioner of railroads and telegraphs, and expenses incident to the same, and for the purpose of exercising police duties and supervision of railroads and telegraphs of the state in the interest of public safety, the annual total expenses of said commissioner, of railroads and telegraphs, including the salary of said commissioner, clerk, inspector, engineer, experts and additional clerical force, and other expenses incident to said office and officer, not exceeding the sum of \$15,000, shall be borne by the several corporations owning or operating railroads within this state, according to their means, to be appointed by the state board of equalization, who shall, on or before the first day in each year, assess upon each of said corporations its just proportion of said expenses in proportion to its gross earnings from operations for the next year preceding that in which the assessment is made. Such assessment so made by the state board of equalization shall, forthwith, be certified to the several railroad companies by the auditor of state, and on or before the next following first day of August in each year the said railroad companies shall pay the amount of the assessment so apportioned to them by the auditor of state, who shall cover the same into the state treasury as a special fund for the maintenance of the said office of commissioner of railroads and telegraphs, and expenses incident thereto.

§ 250-3. Penalty—

That any railroad company or telegraph company violating any of the provisions of this act, shall forfeit and pay to the State of Ohio the sum of \$1,000, and \$25 per diem for every day that said company refuses, neglects or fails to comply with the requirements of this act, which forfeiture and fine shall not release

said company from the assessment herein provided for. 91 O. L. 154.

§ 251. Annual reports of railroad companies; when to be made, and what to contain—

The president, or other officer in charge of any railroad, situate in whole or in part within the state, shall, on or before the first day of September, in each year, make and file in the office of the commissioner a report, verified by the oath of such officer, for the year ending on the thirtieth day of June preceding, which report shall state:

As to stock and debt.

1. The amount of capital stock subscribed ;
2. The amount of capital stock paid in ;
3. The amount of funded debt ;
4. The amount of floating debt ;
- Total amount of paid in stock and debt :

Cost of road and equipment.

5. Cost of right of way ;
6. Cost of construction ;
7. Amount of all other items embraced in cost of road ;
8. Cost of equipment ;
- Total cost of road and equipment :

Characteristics of the road, etc.

9. Length of main line, single track, laid with rail ;
10. Length of branches, single track, laid with rail ;
11. Length of double track, main line and branches ;
12. Aggregate length of sidings and other tracks not enumerated above ;
- Total length of rail computed as single track ;
13. The maximum grade, with its length in main road, and also in branches ;
14. The shortest radius of curvature, with length of curve in main road, and also in branches ;
15. Total degrees of curvature in main road, and also in branches ;
16. Total length of straight line in main road, and also in branches ;

17. Number of wood bridges, and aggregate length ;
18. Number of iron bridges, and aggregate length ;
19. Number of stone bridges, and aggregate length ;
20. The greatest age of wood bridges ;
21. Number of wood trestles, and aggregate length ;
22. The greatest age of wood trestle ;
23. Number and kind of tunnels, and aggregate length ;
24. Length of fence required to inclose road, both sides, and reasons why not completed ;
25. Number of engines ;
26. Number of express and baggage cars ;
27. Number of passenger cars ;
28. Number of freight cars ;
29. Number of other cars ;
30. The highest rate of speed allowed by express passenger trains ;
31. The highest rate of speed allowed by mail and accommodation trains ;
32. The highest rate of speed allowed by freight trains ;
33. The rate of fare for passengers charged for the respective classes per mile ;
34. The highest rate per ton per mile charged for the transportation of the various classes of freight, through and local :

Doings of the year.

35. Length of new rail laid ;
36. Length of rerolled rail laid ;
37. Number and kind of bridges built, and length ;
38. Number of miles run by passenger trains ;
39. Number of miles run by freight trains ;
40. Number and kind of farm animals killed, and amount of damages paid therefor ;
41. Number of passengers (all classes) carried ;
42. Number of passengers carried one mile ;
43. Number of tons of local freight carried ;
44. Number of tones of through freight carried ;
45. Total movement of freight, or number of tons carried one mile :

Earnings for the year.

46. From transportation of passengers ;
47. From transportation of freight ;

- 48. From mail and express service;
- 49. From all other sources;
- . Total earnings for the year:

Expenditures for the year.

- 50. For construction and new equipment;
- 51. For maintenance of way and structures;
- 52. For maintaining and operating motive power and cars;
- 53. For transportation expenses, including all those of stations and trains;
- 54. For interest on bonds and other indebtedness;
- 55. For dividends, stating rate per cent;
- 56. All other expenditures for management of road, and for other purposes;

Total expenditures during the year:

- 57. All casualties resulting in injuries to persons, giving the extent and causes of each, and such other and further information as may be required by the commissioner; but if any company is unable to furnish such required information, the reasons of such inability shall be given. 65 v. 183, § 9.

§ 251a.

[This section required fee of one dollar per mile to commissioner.]

Section 251a (86 O. L. 351) is unconstitutional. *Railway Co. v. State*, 49 Ohio St. 189.

§ 252. The commissioner shall furnish to railroad and telegraph companies blanks for reports—

The commissioner shall prepare and furnish to each railroad company, or to each organization having one or more railroads in charge, and to each telegraph company or chief manager thereof in the state, or having lines in the state, blank forms for making the reports required by this chapter, which blanks may be so prepared by the commissioner as to obtain the information required by the foregoing inquiries more in detail, or omit such of a historical or permanent character as may have been given in previous reports. 65 v. 183, § 9. S. & S. 80.

§ 253. Penalty against officer of railroad for failure to report—

A president or other officer in charge of a railroad, whether doing business or in course of construction, who refuses or neglects to make and furnish the report at the time prescribed in section *two hundred and fifty-one*, or any report required by the commissioner, shall forfeit and pay a sum not exceeding one thousand dollars; and he shall be subject to a like penalty for every period of thirty days thereafter he so refuses or neglects to furnish the same. 70 v. 158, § 10.

§ 254. Annual report by telegraph company—When to be made and what to contain—

The president or chief officer of every telegraph line or company, whether the line is doing business or is in process of construction, shall make a report of the business of such line or company to the commissioner, in such form as he directs, on or before the first day of September, in each year, for the year ending on the preceding first day of June, which report must be verified by the oath of such president or officer in charge; and for neglect or refusal to make and furnish such report at the time herein named, the company owning such line shall forfeit and pay any sum not exceeding five hundred dollars; and the company is subject to a like penalty for every period of thirty days thereafter such president or chief officer so refuses or neglects to furnish the same. 70 v. 158, § 11.

§ 255. Defective or erroneous reports shall be amended in fifteen days—Returns must conform to forms prescribed—Reason must be given for any failure in this respect—

When the returns of any corporation required to report to the commissioner of railroads and telegraphs are incomplete, defective, or probably erroneous, the commissioner shall notify such corporation thereof, and it shall thereupon amend the return in the matter or matters named, and make return of such amendment within fifteen days; and all returns shall be in strict accordance with the forms prescribed by the commissioner; but if any corporation finds it impracticable to return all the items in detail, as required, it shall state the reason why such details cannot be

given; but the fact that it does not keep its accounts in such manner as to enable it to make such returns shall not be considered or taken as a valid excuse; and if the forms for the returns and report furnished by the commissioner makes necessary any change or alteration in the ordinary method or form of keeping the accounts of such corporation, he shall give to such corporation at least thirty days' notice thereof prior to the commencement of the year for which the changes and additions are necessary in order to make the full returns required. 70 v. 276, § 1.

§ 256. Companies operating railroads shall furnish copies of leases and contracts with other companies doing business thereon—

Every corporation or company operating a railroad, or any part of a railroad, within this state, shall, on demand of the commissioner, furnish him with copies of all leases, contracts, and agreements with express, sleeping car, freight, or rolling stock companies, or other companies doing business upon or in connection with such road; and the commissioner shall have power, personally or by agent, to examine any officer, agent, or employe of any railroad company, or of any of said other companies, under oath, relative to the stock which any officer, agent, or employe of the railroad company has in any of said other companies, so doing business upon or in connection with such road, and his pecuniary interest, direct or indirect, in any of said other companies. 70 v. 276, §§ 2, 3.

§ 257. Fatal accidents shall be notified to commissioner by telegraph, and he may examine into the cause of same—

The superintendent of every corporation operating a railroad, or any part of a railroad, in this state, shall promptly notify by telegraph the commissioner of all accidents happening on such railroad, or part of a railroad, in this state, resulting in loss of life to any person or persons; and the commissioner may, personally or by agent, examine into the cause and character of such accidents. 70 v. 276, § 2.

§ 258. Commissioner has power to, etc.—

The commissioner, in the discharge of his duties, has power to subpoena witnesses, administer oaths, compel the production of

books and papers, and punish for contempt, in the same manner and to the same extent as justices of the peace. 64 v. 111, § 5; 70 v. 276, § 3; S. & S. 76.

§ 259. Penalty for officer, agent, or employe of railroad to refuse to answer question—

An officer, agent, or employe of any railroad company who refuses to answer any question propounded to him by the commissioner in the course of any examination authorized by this chapter, shall be fined in any sum not less than fifty dollars nor more than five hundred dollars; and the property of the railroad company of which he is an officer, agent, or employe, is liable to be taken in execution to satisfy the fines and costs in such cases. 70 v. 76, § 3.

§ 260. Statement required to be made by railroad companies—

The secretary of each railroad company, and of each telegraph company, now doing business, or whose line is in process of construction, or which may be hereafter organized in this state, shall, within thirty days after the election of the directors of such company, make out and forward to the commissioner of railroads and telegraphs a list of the officers and directors of their respective companies, giving the place of residence and post-office address of each; and thereafter, if any change occurs in the organization of the officers or board of directors of the company, shall notify the commissioner of railroads and telegraphs of the fact of such change, and the residence and post-office address of each of the officers and directors. 70 v. 155, § 1.

§ 261. Penalty for failure to comply—

For a failure to comply with the provisions of the preceding section, any company so neglecting for thirty days after the time herein provided, shall be subject to the same penalties as attach for neglecting or refusing to make the required annual report to the commissioner of railroads and telegraphs. 70 v. 155, § 2.

§ 262. Prosecutions—

All prosecutions against railroad or telegraph companies, or any officer, agent, or employe thereof, for forfeitures, penalties

or fines, without imprisonment, provided for in this chapter, and other sections of the statutes and laws of Ohio, if not otherwise specifically stated, shall be by civil action in the name of the state; and all prosecutions for penalties involving imprisonment shall be by indictment. 90 O. L. 299.

§ 263. Civil actions—

The civil action provided for in the next preceding section shall be brought by the prosecuting attorney of the proper county at the instance of said commissioner of railroads and telegraphs; and in case said commissioner fail to so instruct the said prosecuting attorney of the proper county, upon the written request of any taxpayer of the county to commence civil action provided for in the next preceding section, said prosecuting attorney shall do so, provided he is furnished with evidence which in his judgment will probably sustain such action, and if the action fail the costs in such case shall be adjudged against the county, except in such cases as hereinafter provided; provided, further, that where cause of civil action arises, as provided for in the next preceding section, within the boundary lines of any municipality, in addition to the provisions already provided for in this section for instituting prosecutions of civil action, the city solicitor of any municipality shall, when required so to do by resolution of the council adopted by a majority of the quorum, institute such proceedings and prosecute them to final judgment. When such action is so brought by a municipality and fails on final judgment in the supreme court, the cost thereof shall be adjudged against such municipality, and time for notice of appeal and giving of bond shall not apply to cases within the meaning of this act. 90 O. L. 299.

§ 264. Annual report to be made by the commissioner, and what to contain—

The commissioner shall make to the governor, on or before the first day of January, of each year, a report of the affairs and condition of all the railroad and telegraph companies having lines in this state, and also of accidents on railroads resulting in injuries to persons, and the circumstances and cause thereof; and he shall include in his report such other information and such suggestions and recommendations as, in his opinion, are of importance to the state. 74 v. 33, § 12.

§ 265. Moneys collected shall be paid into the state treasury—Fees of prosecuting attorneys—

All money arising from suits in the name of the state, or prosecutions against railroad companies or against any of their officers, or employes, for violation of any of the provisions of law relating to railroads, shall be paid into the state treasury; but prosecuting attorneys shall, for any moneys collected therein by them, be allowed ten per centum thereof for their services. 64 V. 111, § 7; S. & S. 77.

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§ 3270. May construct and maintain a railroad, etc., and where—

A railroad company, now existing or hereafter created, may maintain and operate, or construct, maintain and operate, a railroad, with a single or double track, with such sidetracks, turn-outs, offices, depots, roundhouses, machine shops, water tanks, telegraph lines, and other necessary appliances, as it deems necessary, between the points named in the articles of incorporation, commencing at or within, and extending to or into, any city, village, town, or place named as a terminus of its road. 69 v. 203, § 4.

Corporation is liable like individual for wrongful acts of employees or independent contractor; but corporation is not liable for injury resulting from doing work, where it retained no control over the mode and manner of doing such work. *Hughes v. Ry. Co.*, 39 Ohio St. 461.

Where a donation is made of money to a railway company, payable "at any time within two years," that said line may be constructed and operated between given points, "provided the depot at C. is permanently located not farther east than the center of C.," such location of depot is a condition precedent to the right to collect the donation. *Elder v. Ry. Co.*, 1 C. C. 256.

In action for injury by fire caused by sparks from locomotive; *Held*, company must use best appliances in common use and keep them in good order; not sufficient if in good order when inspected before starting. *R. R. Co. v. Fredenbur*, 3 C. C. 23; affirmed in 23 B. 434.

A railroad company organized under laws of Ohio has no power to purchase the entire capital stock of a mining corporation, and its contract for such purchase is void; the use of its funds arising from sale of its mortgage bonds for such purpose is unlawful; and the fact that the directors owned all the capital stock is immaterial. *Railroad Co. v. Burke*, 19 B. 27.

§ 3271. How terminus fixed in certain cases—

When a terminus named in the articles of incorporation is a county upon the line or boundary of the state, the president and directors of the company, upon the location of the road in that county, shall make and acknowledge a certificate definitely fixing the location in such county, and file the same with the secretary of state. 69 v. 163, § 1.

What amounts to a location of a road. *Columbus Terminal, etc., Co. v. Tol. & Ohio, etc., Co.*, 32 B. 186 (C. P.)

§ 3272. How line or termini may be changed—

A company may, by a resolution adopted by a majority of its board of directors, at a meeting thereof duly called for the purpose, with the written consent of three-fourths in interest of its stockholders, change the line, or any part thereof, and either of the proposed termini, of its road; but no change shall be made which will involve the abandonment of any part of the road, either partly or completely constructed; and any subscription of stock made upon the faith of the location of such road, or a part thereof, upon any line abandoned by such change, shall be canceled at the written request of the subscriber not having consented thereto, filed with the secretary or other chief officer of the company within six months after such change. 73 v. 115, § 1.

Where a subscription was made on an express condition that the road run as specified, a written request for cancellation is not necessary when the line is changed. Ry. Co. v. Fisher, 39 Ohio St. 331.

§ 3273. Change to be certified to secretary of state—

When any such change is made, the same shall be described in such resolution, a duly-authenticated copy of which, under the seal of the company, shall be filed with the secretary of state, and by him recorded, with proper reference, on the record of the articles of incorporation of the company, and when so filed, such change shall be considered as made, and shall be as valid and binding as if such changed line had been the line originally described in such articles. 73 v. 115, § 2.

§ 3274. Mortgage covers line as changed—

When any such company has issued its mortgage bonds for the construction of its road, the record of the mortgage securing the same, in each county through or into which the changed line of the road passes, shall be as effectual to create a lien upon the changed line of road, and upon the property of the company, as if such mortgage contained a complete description of such changed line and of such property. 73 v. 115, § 3.

§ 3275. When and how route may be changed—

When a company, the line of whose road has not been finally located in whole or in part, finds it necessary, in order to avoid dangerous or difficult curves or grades, or dangerous or unsub-

stantial grounds or foundations, or for other reasonable cause, to pass through a county not named in the articles of incorporation, or to avoid passing into or through a county named therein, other than a county in which a terminus of the road has been fixed by the articles of incorporation, or in which is located a town or place by or through which the line of such road is to pass, the president and directors of the company, or a majority of them, may, under their hands and seals, make a certificate declaring such necessity, and the cause thereof, and name therein the county, or counties, through which it may be necessary to pass, or which it may be necessary to avoid, which certificate shall be acknowledged and certified, as provided in chapter one of this title, and forwarded to the secretary of state; and a copy of such certificate, duly certified by the secretary of state, shall be evidence of the facts therein stated; but nothing herein shall be construed to authorize the abandonment of any part of such company's line that has been finally located, or a change of the general route of the line of such road, or the terminal points named in the articles of incorporation. 71 v. 54, § 1.

Agreement for location of route of railroad at a particular intermediate place is not per se void as against public policy. *R. R. Co. v. Ralston*, 41 Ohio St. 573.

§ 3276. Company liable for damages, and certain subscriptions canceled—

When the line of road of any company is, under the preceding section, diverted from a county named in the articles of incorporation, the company shall be liable in damages, if any be caused by such change or diversion, to any person owning land in such county, and all persons who subscribed to the capital stock of the company on the line of that part of the road so changed shall be released from all obligations to pay their subscriptions; but no action shall be commenced for such damages after six months from the filing of such certificate with the secretary of state, and the publication of notice thereof by the company, for four consecutive weeks, in some newspaper printed in such county, or, if no newspaper is printed therein, in some newspaper having general circulation therein, saving the rights of infants, lunatics, and persons imprisoned, for six months after their disability is removed. 71 v. 54, § 2.

A change by which the line is made to run through an additional county does not release subscribers. *Armstrong v. Karshner*, 47 Ohio St. 276.

§ 3277. May change location or grade, when—

For the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or when the road-bed has been injured or destroyed by the current of any river, watercourse, or other unavoidable cause, or for other reasonable cause, a company may change the location or grade of any portion of its road, whether heretofore made or hereafter to be made, but shall not depart from the general route prescribed in the articles of incorporation. 63 v. 141, § 11; 62 v. 36, § 1; S. & S. 111 and 116.

As to when route cannot be changed when once located, see *R. R. Co. v. Naylor*, 2 Ohio St. 236, and *Atkinson v. R. R. Co.*, 15 Ohio St. 21.

When additional land may be appropriated. *R. R. Co. v. Daniels*, 16 Ohio St. 390.

§ 3278. When land may be appropriated to make such change—

For the purpose of making any such change, the company shall have all the rights, powers and privileges to enter upon and appropriate lands, and make surveys necessary to effect such change, upon the same terms, and subject to the same obligations, rules and regulations, as are prescribed by law, except that, when it is necessary to appropriate property for any such change, the appropriation may be had, if the probate court, in the proceedings instituted therefor, find that the proposed change will conduce to the interests of the company and the public, and that the property and rights of those owning real estate along the portion of the road to be affected by the change will not be unreasonably injured thereby; but when the location is changed after the road has been used for transportation of persons and property, the company shall be liable for all damages occasioned by such change to the owner of the land upon which the road was first constructed. 63 v. 141, § 11; 62 v. 36, § 1; S. & S. 111 and 116.

A railroad company cannot be compelled to appropriate more land than the petition asks for, by a motion filed in a pending case. Questions of measure of damages also discussed. *Schaeble v. L. S. & M. S. Ry. Co.*, 10 C. C. 334.

§ 3279. Certain companies may extend road into other states—

Any company organized for the purpose of constructing a railroad to the boundary line of this state, may extend its road into and through any adjoining state, under the regulations which may be prescribed by such adjoining state; and the rights, powers and privileges of such company over such extension, in the construction and use of such road, and in controlling the property and applying the money and assets thereon, shall be the same as if the road were built wholly within this state. 53 v. 143, § 9; S. & C. 328.

§ 3280.

A company may construct branches from the main line to towns or places within the limits of any county through or into which its road passes, or to a connection with any railroad which is or may be built within this state, or to any coal or other mine, stone-quarry, plastic clay, pottery-clay and fire-clay pits or banks, ore or shale banks, if, at a meeting of the stockholders called for that purpose, the holders of a majority of the capital stock of the company, by a vote, in person or by proxy, so determine; and upon such determination the president and directors shall make and acknowledge a certificate setting forth the facts, and file the same with the secretary of state. 91 O. L. 87.

A grant of power to a railroad company to locate and construct branches to its main line, does not include authority to purchase the railroad of another company, constructed under a different charter. *Campbell v. Railroad Company*, 23 Ohio St. 168.

§ 3281. Appropriation of land by railroad or municipal corporation—

A company or a municipal corporation which may own or operate a railroad may enter upon any land for the purpose of examining and surveying its railroad line, and appropriate so much thereof as may be deemed necessary for its railroad including necessary side-tracks, depots, workshops, round-houses, and water-stations, material for construction, except timber, a right of way over adjacent lands sufficient to enable it to construct and repair its road and the right to conduct water by aqueducts and to make proper drains; but no appropriation of private property to the use of a company or municipal corporation which owns or

operates a railroad shall be made until full compensation therefor is made in money or secured by deposit of money to the owner irrespective of any benefit from any improvement proposed by the company or such municipal corporation as prescribed by law. 91 O. L. 294.

Where a single track is laid and operated in a street, such condition is notice to a purchaser of abutting property of a right to maintain a track; but such purchaser will not be affected by an unrecorded deed from his grantor, executed more than six months prior, giving to the company permission to lay additional tracks, if he purchased in good faith without knowledge of the existence of such conveyance. The right to lay an additional track must be acquired by appropriation, or other suitable means. *Varwig v. Clev., Cin., Chic. & St. L. R. R. Co.*, 54 Ohio St. 455.

Where railroad company occupies land for right of way with verbal consent of owner and verbal promise to pay, which is not performed, owner may compel appropriation at any time within twenty-one years, or tender conveyance and recover compensation. *Fries v. Ry. Co.*, 56 Ohio St. 135.

Board of public works cannot authorize railroad on bank of canal. *State v. Railway*, 37 Ohio St. 157.

For power to appropriate land under facts given, see *Platt v. Penna. Co.*, 43 Ohio St. 228; *Ohio Southern R. R. v. Hinkle*, 1 N. P. 63 (Prob. Ct.).

An owner, who, without objection, sees a railroad constructed on his land, or large expenditures made, upon the faith of his apparent acquiescence, will be estopped from reclaiming the land or enjoining its use, but not from claiming compensation for its value. *Penna. Co. v. Platt*, 47 Ohio St. 366; the measure of compensation is the value of the land at the time it is assessed in the proceeding. *R. R. Co. v. Perkins*, 49 Ohio St. 326.

Streets may be laid across lands of railroad company if such use is reasonably consistent with use by railroad company and does not defeat same. *R. R. Co's v. City of Dayton*, 23 Ohio St. 510.

For authority to appropriate right of way for streets across railroad lands, proceedings and measure of damages, see *Toledo and Ohio Central Ry. Co. v. City of Fostoria*, 7 C. C. 293.

Although land appropriated under power of eminent domain can not be taken for another public use which will defeat or supersede the former use, unless power to make such second appropriation be granted expressly or by necessary implication, land held by a corporation, which is not employed in nor needed for the proper exercise of its corporate franchises, is not within the reason or operation of the rule. *R. R. Co. v. Village of Belle Center*, 48 Ohio St. 273.

§ 3282. What lands a company may acquire—

Such company may acquire, by purchase or gift, any lands in the vicinity of the line of its road, or through which the same passes, so far as may be deemed convenient or necessary by the company to secure the right of way, or such as may be granted

to aid in the construction of the road, and hold or convey the same in such manner as the directors may prescribe; but all such conveyances acquired by gift, to said companies, shall be null and void, unless said company complete said road on the right of way so conveyed within five years from the time of said conveyance; and all deeds and conveyances made by the company shall be signed by the president, under the seal of the company. 50 v. 274, § 15. S. & C. 279.

A party owning lands entered into an agreement with the company by which it was allowed to enter on the lands and construct the track of its road; it was to pay for the use of the land, upon an estimate to be made by persons selected, within sixty days after such estimate; the agreement provided that, if the payment was not made, the interest which it gave, and the fixtures and works constructed, should become the property of the party, as if the agreement had not been made, and "said company had, without authority, and in its own wrong, entered upon said land, and made said road through the same;" and the estimate having been made, and the payment not made within the time, an injunction was asked to restrain the company from using the land for its railroad track: *Held*, that an injunction was properly refused, and that the party should be left to pursue the ordinary legal remedies. *Coe v. Railroad Co.*, 10 Ohio St. 372.

The owner of a piece of land agreed in writing to convey it to a railroad company for depot purposes, on condition that the land should be occupied for the western part of the company's depot grounds, and a part of the usual depot buildings erected thereon; the company caused to be erected and maintained on said piece of ground a warehouse for the accommodation of the public in doing business on the road, and constructed thereon facilities for loading and unloading live stock, coal and lumber, but erected the principal depot buildings forty rods east of said piece of land: *Held*, that the company had complied with the condition of the agreement, and was entitled to hold the land. *Railway Co. v. Rose*, 24 Ohio St. 219.

When a railroad company has received from private parties donations of land, subscriptions of stock, and payments of money, in consideration that it should locate its road at a particular place, and allow private side tracks and warehouse privileges in connection therewith, the company will not be permitted to effectuate a change in fact (though not in name) of the line of its road away from such place, by getting up a new corporation, and constructing a new road parallel with its old one, under a different charter, and permitting its old line to go to decay, without compensating the parties with whom it contracted. *Chapman v. Railroad Co.*, 6 Ohio St. 119.

The measure of damages in such case will be: 1. The par value of plaintiff's stock and unpaid dividends, provided they transfer the stock to the company. 2. The value of the lots donated by plaintiff to the company, estimated at the date of the location of the road thereon, with interest from the commencement of the action. 3. The diminution in value of plaintiff's

warehouse and side tracks resulting from the change in line. 4. Compensation for the right of way through plaintiff's land, from the time the line was changed until the railroad quitclaims the same to him, and if this deed is not given, then the compensation is to be computed as if the right of way is to be perpetual in the company; and in default of the payment of such damages by the day named, the company should be enjoined from using the other line till payment. *Id.*

The power to purchase land conferred by section 14 of the act of February 11, 1848 (46 v. 40), is not limited to the acquisition of such lands as may be necessary for operating and maintaining its road. *Walsh v. Barton*, 24 Ohio St. 28.

If, in making a purchase of real estate, the company abuse the power conferred upon it by said section, still, after resale and conveyance, the title becomes indefeasible in its vendee. *Id.*

A deed purporting to have been executed by the president of a railroad company, under the seal of the corporation, as authorized by section 15 of the act of May 1, 1852 (50 v. 274), if objected to, cannot be given in evidence without proof of its execution. *Id.*

If a railroad company has obtained a quitclaim deed from a tenant for life of premises for a right of way, it cannot enter on the land without first making compensation to owner of fee. *Gorrill v. Ry. Co.*, 4 C. C. 398.

For right of owner of leased land to grant right of way to railway company, see *Ohio Oil Co. v. Railroad Co.*, 4 C. C. 210.

§ 3283. How right to occupy road, etc., acquired—

If it be necessary, in the location of any part of a railroad, to occupy any public road, street, alley, way or ground of any kind, or any part thereof, the municipal or other corporation, or public officers or authorities, owning or having charge thereof, and the company, may agree upon the manner, terms and conditions upon which the same may be used and occupied; and if the parties be unable to agree thereon, and it be necessary, in the judgment of the directors of such company, to use or occupy such road, street, alley, way or ground, such company may appropriate so much of the same as may be necessary for the purposes of its road, in the manner and upon the same terms as is provided for the appropriation of the property of individuals; but every company which lays a track upon any such street, alley, road or ground, shall be responsible for injuries done thereby to private or public property lying upon or near to such ground, which may be recovered by civil action brought by the owner, before the proper court, at any time within two years from the completion of such track. 54 v. 133, § 12. S. & C. 278.

This section does not authorize surrender and abandonment of street by

city. The use can only be in common, and exclusive use cannot ripen into title by limitation. *L. S. & M. S. Ry. Co. v. Elyria*, 14 C. C. 48.

For contract with city and damages for breach, see *Railway Co. v. Carthage*, 36 Ohio St. 631. See also *Lawrence R. R. Co. v. Cobb*, 35 Ohio St. 94; *Same v. Williams*, 35 Ohio St. 171; *R. R. Co. v. Mowatt*, 35 Ohio St. 284; *State v. Ry. Co.*, 37 Ohio St. 157; *Megrue v. Com'rs*, 15 C. C. 242.

Where a railroad company builds its road across streets in a city under an ordinance granting permission under condition that if such streets shall be widened or opened they shall cross the tracks free of expense for right of way, etc., such company or its grantee with notice is bound by said condition. *R. R. Co. v. City of Hamilton*, 3 C. C. 455.

In an action to recover for injury to property under this section, it is competent to consider substantial injury and loss to the property (not common to the community at large) caused by smoke, noises and sparks of fire caused by running of locomotives and cars along the track in front of the property. *Ry. Co. v. Gardner*, 45 Ohio St. 309. See also *Ry. Co. v. Reeder*, 6 C. C. 354.

The mere fact that a city granted a railroad company the right to construct the road through a street does not make it liable for damages to abutting property by such use of the street. *Dillenburg v. City of Xenia*, 41 Ohio St. 207. "Near to" construed. *R. R. Co. v. McLaughlin*, 15 C. C. 1.

An ordinance which authorizes a railroad company to erect new bridges over streets, etc., does not entitle the company perpetually to maintain them, nor divest the municipal authorities of control over streets. *R. R. Co. v. Defiance*, 52 Ohio St. 262.

A bridge required to be kept in a street under which the railroad passes may be closed when out of repair and dangerous, although it is part of the public street. *Toledo St. Ry. Co. v. Mammet*, 13 C. C. 591.

§ 3284. May divert road or stream when necessary—

A company may, whenever it is necessary in the construction of its road to cross a road or stream of water, divert the same from its location or bed; but the company shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness; and any or all railroads hereafter constructed which shall cross any avenue or public highway leading from a city of the first or second class to a public cemetery of such city, situated within or without the limits of any such city, shall be constructed so as either to pass under or over such avenue or public highway, at such elevation or depression, as the case may be, as will allow the unobstructed passage of all wagons, carriages, or other vehicles which it may be necessary for any person to use upon such avenue or public highway. 50 v. 274, § 16; S. & C. 279.

Under the thirteenth section of the act of May 1, 1852 (50 v. 274), it is the duty of a railroad company to restore a highway, diverted in the construction of its road, to such condition as not to impair its former usefulness, and it is liable for injuries resulting from its neglect to do so; but when the highway has been fully restored, the corporation is under no obligation to keep the same in repair. *Railway Co. v. Maurer*, 21 Ohio St. 421; *Potter v. Bunnell*, 20 Ohio St. 150. But if, after the restoration of the highway, the railroad company wrongfully encroaches upon it, or impairs its usefulness, it will be held liable for damages resulting from such encroachment or impairment. *Railway Co. v. Maurer*, *supra*.

The right of a railroad company to enjoy the use of its road at the crossing of a common highway, and the right of the traveling public to use the highway, are co-ordinate and equal, and reasonable care and prudence must be exercised by each in the use of the crossing, so as not to interfere unnecessarily with the other. *Railway Co. v. Maurer*, *supra*.

A corporation owning and operating a railroad which crosses a common highway, is under no obligation to remove from the highway obstructions placed on the crossing by a stranger, if the material constituting the obstruction is neither the property, nor under the care and control, of the corporation, although the existence of the obstruction is brought to the knowledge of its agents; nor does such obligation exist, although the person so placing the obstruction be a brakeman on the company's road, and the material constituting the obstruction be waste manure from the stock-cars of the company, if the brakeman so placed the manure for his own use, without the authority of the company, and at the time was not acting within the scope of his employment and duty as brakeman. *Railway Co. v. Maurer*, *supra*.

When railroad company may be enjoined from obstructing highway. *State v. Railway Co.*, 36 Ohio St. 434.

When railroad company cuts new channel for a stream, and throws the water upon land of another to his damage, the company is liable; and until a right is acquired to cause continuing damage, the four years statute of limitations will not bar a recovery. *Valley Ry. Co. v. Franz*, 43 Ohio St. 623.

The statute authorizing construction of track across public road imposes personal duty on railway company of care and diligence to public, and its contractors employed to do the work are its agents and servants, and it is responsible for their negligence. *C. H. & D. Ry. Co. v. Van Dorn*, 1 C. C. 292.

This section does not authorize a railroad company to construct and maintain its road across a street of a city without consent of the city authorities; such right must be obtained under sec. 3283. *Youngstown v. Railroad Co.*, 3 C. C. 214.

What is not a "public cemetery." *Id.* The railroad company cannot permanently appropriate a portion of a public highway by obstructions materially interfering with public travel. *R. R. Co. v. Commissioners*, 31 Ohio St. 338. See also *Ry. Co. v. Bohm*, 34 Ohio St. 114.

As to duty of railway company where street not improved, or where it is

doubtful whether there was a public street where bridge originally built many years before, see *Toledo v. Ry. Co.*, 17 C. C. 265.

§ 3285. May construct its bridges as toll bridges—Tolls thereon—

It may so construct its bridges as to answer the ordinary purposes of travel and business, as well as for railroad purposes, and may demand and receive such rates of toll for the passage of individuals, vehicles of all kinds, and animals, as it may fix, subject to the approval of the commissioners of the county or counties in which such bridge is erected; but the rates of toll must be uniform, shall be printed or painted, and kept conspicuously posted in or near the toll-house of the bridge, and may be revised and changed in the first week of each year; and the company may compound and bargain with any person or party for the use of such bridge, by the month, quarter, or year; but no company shall receive toll upon any such bridge if erected within one mile of any toll-bridge previously constructed over the same stream. 51 v. 415, § 1; S. & C. 323.

§ 3286. May issue bonds for certain purposes, secured by mortgage—

A company may issue bonds, convertible or otherwise, bearing a rate of interest not exceeding seven per centum per annum, to an amount not exceeding two-thirds of its capital stock, actually subscribed, for one or more of the following purposes: Completing or extending its road, constructing branch roads, laying double or additional track, increasing its machinery or rolling-stock, building depots or shops, making improvements, paying its unfunded debts, or redeeming its bonds; and it may secure the bonds issued for such purposes by mortgage on its property, or otherwise, if authorized by the vote, in person or by proxy, of holders of a majority of the stock upon which all the installments called for by the board of directors have been paid; but such vote shall be taken at a meeting of stockholders, of which thirty days' notice shall be given. 73 v. 25, § 5.

See *Union Trust Co. v. N. Y. C. & St. L. R. R. Co.*, 17 B. 176, for facts held to make "watered" stocks and bonds void.

§ 3286-1.

[When narrow gauge railroad may issue second mortgage bonds. See 77 O. L. 164.]

§ 3287. May borrow money, and secure same by pledge of its property—

A company may borrow money, at a rate not exceeding seven per centum per annum, for any purpose that the same may be needed in its business, and execute bonds or promissory notes therefor in sums of not less than one hundred dollars; and it may secure the payment of such bonds and notes by a pledge of its property and income; but the aggregate indebtedness authorized by this and the preceding section shall not exceed the amount of the capital stock of the company. 50 v. 274, § 14; S. & C. 279.

Where interest is stipulated to be paid out of net income, if there be no net income for a period, the interest will accumulate and become a charge upon income subsequently realized, and a diversion of such fund may be enjoined. *R. R. Co. v. Shoemaker's Ex'rs*, 3 C. C. 473.

As to validity of acts of directors who have not paid any installment upon their stock subscription, and liability for issuing bonds in excess of authorized amount, see *Raymond, Trustee, v. Railroad Co.*, 21 B. 103.

Bonds completed in form and negotiable by delivery, if placed in president's custody and wrongfully negotiated by him, are valid in hands of purchaser without notice of wrong done; all bonds in hands of bona fide holders for value are equal in priority under mortgage lien, though issued at different times. *R. R. Co. v. Lynde*, 55 Ohio St. 23.

§ 3288. How mortgage or pledge may be made—

Such mortgage or pledge may be made by the company executing a deed of mortgage, or other instrument in writing, for the purpose of securing the payment of the loan of money made, or the notes, bonds, or other evidences of the indebtedness issued by the company, which mortgage may include the personal as well the real property of the company. 51 v. 332, § 1; S. & C. 322.

Certain persons, their associates, successors, and assigns, were "created a body corporate, with succession, with power to sue, and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey, at pleasure, all such real and personal estate as may be necessary and convenient to carry into effect the objects of the incorporation;" the corporation was authorized to construct and maintain a railroad between certain termini, and to demand and receive, for the transportation of persons and property, a compensation not exceeding certain specified rates; and it was also authorized to appropriate, by proceedings under a general law regulating such proceedings, lands necessary for its railroad track, the property of individuals; *Held—*

1. That, under these general powers, the corporation had no power to alienate the franchise to be a corporation, or the franchise to construct and

maintain a railroad, and receive compensation for the transportation of persons and property, nor any interest in real estate acquired and held solely and exclusively for the purpose of the exercise of such franchise.

2. That, after the railroad had been constructed, and prepared for use, things requisite for that use, such as locomotives, cars, and the like, not affixed to the land, being acquired by the corporation, are to be regarded as personal property, subject to alienation, and liable for debts.

3. That the corporation could not make a mortgage of any property, such as the above described, to be subsequently acquired, so as to give it validity, in other manner, or to a greater extent, than an individual owner of personal property. *Coe v. Railroad Co.*, 10 Ohio St. 372.

The corporation had a grant of power to borrow money, not exceeding its capital stock, at a rate of interest not exceeding seven per cent, and to execute bonds therefor, and to secure the payment thereof by a pledge of the property and income of the company; and a subsequent grant of a like power, and the authority to pledge, was expressed to be by "mortgage or otherwise, the entire road, fixtures, and equipments, with all the appurtenances, income, and resources thereof;" *Held—*

1. That under the power thus granted for the special purpose of borrowing money, the company could not mortgage the franchise to be a corporation, appertaining to the individual members of the corporation, but could mortgage the franchise of the corporation to maintain the railroad, and receive compensation for the transportation of persons and property, and could mortgage property connected with the railroad and the use of its franchise, whether real or personal, to be subsequently acquired.

2. That the power which the company had to institute a judicial proceeding to appropriate private property was not transferable, and that the mortgage of the company could give no right to the exercise of such a power, which the provisions of the general law on the subject did not authorize.

3. That the execution of a mortgage by the company, under such special power, could give no exemption of its personal property from a liability which might be otherwise created by its own act, or a judicial proceeding. that the execution of a like mortgage upon personal property, by an individual, would not create. *Id.*

The company issued bonds, and executed mortgages to secure their payment, under its special power; the bonds were made payable ten years after their date, with interest at the rate of seven per cent, payable semi-annually; and they were negotiated by the company at a discount, and a part of them were exchanged for iron rails; *Held—*

1. That it was a proper exercise of the power to make the interest on the bonds payable semi-annually.

2. That the act of March 3, 1851 (49 v. 94), which authorized the directors of the company to sell or negotiate the bonds issued by the company, at such rates as they might think proper, and which provided that the bonds so sold should be as valid, in every respect, as if sold at their par value, applied both to the bonds, and its security given for their payment; and, therefore, the sale of the bonds at a discount did not render invalid the mortgages.

3. That the company having received authority to sell the bonds at less

than their par value, there could be no ground for prohibiting an exchange of the bonds for iron rails, and the fact of such exchange, or the intention to make it, did not invalidate the bonds or the mortgages. *Ib.*

The company executed three mortgages upon its property and income, the property in possession and to be acquired; two of these mortgages were properly executed and recorded, but the second in order of time, executed in New York, and acknowledged before an Ohio commissioner in that state, had but one witness; and the third or subsequent mortgage was expressly made subject to the first and second: Held, that whether the second mortgage be regarded as creating a legal or equitable claim, it was entitled to a priority over the third. *Ib.*

A creditor having been permitted to levy an execution upon a part of the personal property, including a portion acquired subsequently to the date of both the second and third mortgages, but this levy having been made after the action was brought, and while the property was in the hands of a receiver appointed in the case: Held, that as against even the equitable claim of the second mortgage, the creditor was not entitled to a preference. *Ib.*

The consideration of the debt, for which the creditor recovered judgment, was for money advanced in payment of interest for the company, and taxes assessed against the company, and for rights of way paid for by the creditor: Held, that such consideration of the debt due from the company created no equitable claim upon the property conveyed by the mortgages. *Ib.*

The mortgages executed by the company were to trustees for the benefit of the holders of the bonds; they provided for the payment of the interest and principal of the bonds, and contained a defeasance; the instruments also purported to give to the trustees an authority to sell the property, upon conditions, at a place, and in a mode prescribed; and the action was brought to obtain, and the relief asked was, a sale under the order of the court: Held—

1. That the parties were entitled to such sale.
2. That the property must be sold as real and personal, and that the real estate must be sold according to the rules governing sales of real estate, and must, therefore, be appraised.
3. That the railroad with its fixtures, constituting an entire tract of real estate, indivisible for the purpose of the sale, together with the franchise connected therewith, should be sold in like manner as an entire tract, lying in two or more counties, and the proceedings incidental to the sale should be had in the county in which the action was brought.
4. That the personal property should be sold as personal property, but might be sold with such precautions to prevent a sacrifice, and to produce the highest price, as the court, in its discretion, might order.
5. That the mortgagees must be regarded as proceeding on that part of the instrument which operates as a mortgage, and not under the power to sell, and, therefore, the court would not be authorized, in this action, to charge upon the proceeds realized by a sale an allowance for the trouble of such mortgagees, or the fees of their counsel.
6. That the mortgagees represented the bondholders, and the latter were neither necessary nor proper parties to the action, and that any question as

to the amount for which the security would be available must be made with the mortgagees, by an issue in the action.

7. That the mortgagees, as between them and the company, would be authorized to receive the proceeds of the sale, but the company would have the right to require that, upon or before payment of the proportion payable upon any bond, it should be produced, and, if paid in full, canceled, or, if paid in part, such payment to be credited.

8. That any question as to the party entitled to receive the money on a bond, or as to the proportion payable on any bond lost or destroyed, or questions which may arise between the mortgagees and any bondholder, need not be anticipated by any order to be made in the action between the present parties, but should be disposed of when they arise in another action, or in a supplementary proceeding.

9. That an order made requiring the bondholders to prove their claims, and state the amount paid for the bonds, was erroneous. *Ib.*

A railroad corporation executed a mortgage for money borrowed upon its road and equipments; the loan was for a long period, but the interest was to be paid semi-annually; the corporation had, by the terms of the mortgage, the possession and use of the road until default in payment of interest; there had been no default, and a creditor recovered judgment, and levied an execution upon a part of the equipments of the road; and the mortgagee filed a petition to obtain a perpetual injunction, upon the ground that the use and possession of the road were indispensable to enable the corporation to raise money wherewith to pay the interest as it became due: *Held*, that such an averment did not show a sufficient ground for an injunction. *Coe v. Knox Co. B'k*, 10 Ohio St. 413.

A mortgage by a railroad company, deriving its powers under the act of February 11, 1848 (46 v. 40), although it may cover property connected with the use of its franchise to be subsequently acquired, does not operate to exempt such property, in its nature personal, and while it remains in possession of the corporation, from being levied upon by judgment creditors of the company. *Coe v. Peacock*, 14 Ohio St. 187.

A power inserted in a mortgage authorizing the mortgagee, upon default of payment, to take possession of the railroad, and other property connected therewith, and use or sell the same, must be exerted upon all the property mortgaged, and does not authorize the mortgagee to detach portions thereof, either from the possession of the company, or an officer succeeding to its rights, by valid levy thereon. *Ib.*

The damages given by the statute to the defendant, in an action of replevin, brought by the mortgagee against the officer, when it appears that the mortgage lien upon the property exceeds its value, is not the value of such property, or the amount of the execution levied upon it, but nominal merely. *Ib.*

Mortgages of railroad companies, executed under statutory provisions authorizing them to pledge their "entire roads, franchises, fixtures, and equipments, with the income and resources thereof, together with the capital stock," and declaring that such mortgage shall be "a good and substantial lien, as well upon the personal as real property of the company," where they

contain apt language to that effect, attach to and cover future acquisitions of property for uses of the road. *Coopers v. Wolf*, 15 Ohio St. 523.

The cast-off articles, fragments, and old materials, once forming part of the road, or used in its operation, still continue under the mortgage, if a proper and judicious management of the road requires that they should be re-cast, or exchanged for new articles, for the uses of the road. *Id.*

Where the amount of such mortgages exceeds the entire value of the mortgaged property, only nominal damages can be recovered against the sheriff, for refusing to levy upon and sell the property, on executions against the company *Id.*

A mortgage executed by a railroad company on "the road" of the company, "whether made or to be made, acquired or to be acquired, and all property, real or personal," of the company, "whether now owned or hereafter to be acquired, used, or appropriated, for operating or maintaining the said road," is not a lien upon real estate of the company, then owned or afterward acquired, which has not been used or appropriated for operating or maintaining the road. *Walsh v. Barton*, 24 Ohio St. 28.

See sec. 3309a, and *Hatry v. Ry. Co.*, 1 C. C. 426, and 37 B. 234.

§ 3289. Where such mortgage to be recorded—

It shall be held to be a sufficient record of any such mortgage, heretofore or hereafter made, if the same is recorded in the office of the recorder of deeds in each of the counties in which the real or personal property is situate or employed, and the mortgage so recorded shall be held to be a good and substantial lien, from the date of the record of the same in each county where it is recorded, as well upon the personal as the real property of the company. 51 v. 332, § 2; S. & C. 322.

§ 3290. How directors may dispose of securities—

The directors of the company may sell, negotiate, mortgage, or pledge such bonds or notes, as well as any notes, bonds, scrip, or certificates for the payment of money or property which the company may have theretofore received, or shall hereafter receive, as donations, or in payment of subscriptions to the capital stock, or for other dues of the company, at such times and in such places, either within or without the state, and at such rates and for such prices, at not less than seventy-five cents on the dollar, as, in the opinion of the directors, will best advance the interests of the company; and if such notes or bonds are thus sold at a discount, without fraud, the sale shall be as valid in every respect, and the securities as binding for the respective amounts thereof, as if they were sold at their par value. 51 v. 286, § 1; 73 v. 25, § 5; S. & C. 321.

§ 3291. Directors may, open transfer books in other states—

The directors of any company, when they deem it expedient for the interest or convenience of the company, may open transfer books in any of the states of the United States, for the purpose of transferring stock which may be purchased or held by persons out of this state; and they may employ suitable agents to keep such transfer books, whose acts, done under the authority of this section, shall be binding on the company. 48 v. 51, § 1; S. & C. 321.

§ 3292. When directors may elect a vice-president—

The directors may elect from their number a vice-president, whenever, in their opinion, the interest or convenience of the company requires it; and in case of the absence, death, resignation, or other disability of the president, the vice-president so elected shall exercise the same powers and discharge the same duties as properly and legally belong to the office of president, until such vacancy is filled by a new election, or such disability removed. 53 v. 36, § 1; S. & C. 323.

§ 3293. When directors may elect a treasurer—

The directors may, whenever, in their opinion, the interests or convenience of the company will be promoted thereby, elect any suitable person as treasurer of the company, to be subject to such rules and regulations as they or the company may prescribe. 54 v. 103, § 1; S. & C. 324.

§ 3294. Number of directors may be increased or diminished—

A company may, by a vote of a majority of its stock, at any regular annual meeting of the company, increase the number of directors to any number not greater than fifteen, or decrease the number before or after such increase to any number not below seven. 72 v. 17 § 3.

§ 3295. Directors may be classified at stockholders' meeting—

The stockholders of a company, whether organized under general or special laws, whose railroad is wholly or partly within this state, may at any regular meeting of its stockholders, or a special

meeting of which 'at least thirty days' notice has been given by publication, by an affirmative vote of the stockholders owning a majority of the stock of the company, direct its board of directors to so classify the members thereof, by lot or otherwise, that one-third thereof shall terminate their official term at the first annual election thereafter, one-third at the next annual election thereafter, and the remainder at the next succeeding annual election thereafter; at the first regular election succeeding such classification, when the term of the directors of the first class expires, and at each succeeding annual election thereafter, the stockholders shall elect directors for three years, to take the place of those retiring, and no more; and all vacancies which otherwise occur in the board shall be filled in the manner prescribed by law. 66 v. 77, § 1.

§ 3296. May be classified at annual election—

The stockholders of a company whose road is wholly or partly within this state, may, at any regular annual election of directors thereof, so classify and elect such directors that one-third thereof shall serve for one year, one-third for two years, and the remainder for three years; at each succeeding annual election thereafter the stockholders shall elect directors to take the place of those whose terms so expire; no person shall be allowed to vote for directors as aforesaid unless he has been a registered stockholder of such company at least thirty days prior to such election; and the registry of such stock shall be made in the books kept at the principal office of the company. 66 v. 77, § 2.

A stockholder may sue on behalf of the stockholders to enforce rights when the corporation refuses to sue, and the fact that he may be otherwise interested is immaterial. *Henry v. Railway Co's*, 2 N. P. 118 (C. P.).

§ 3297. Further application of two preceding sections—

The provisions of the two preceding sections shall also apply to companies whose bondholders or other creditors share with the stockholders in the election of directors; and in such case the vote necessary to direct the classification provided for in said sections shall be the same as is required to elect directors of such company. 66 v. 77, § 3.

§ 3298. Subscriptions payable on completion of the road authorized—

The directors of a company which has expanded in the construction of its road ten per centum of its authorized capital, and has obtained actual bona fide subscriptions to its capital stock to the amount of at least twenty per centum thereof, may receive subscriptions to its capital stock, payable in such installments, dependent upon the completion of the whole or any part of its road so that cars may pass over the same, as its directors may deem expedient, and upon full payment thereof may issue certificates of stock therefor; but no subscriber to the stock hereby authorized shall be entitled to any of the privileges of a stockholder until his subscription is fully paid, nor shall he, for any purpose, be deemed a stockholder until the happening of the contingency upon which the installments on his subscription are made dependent. 54 v. 133, § 3; S. & C. 325.

An offer in writing to make such subscriptions, conditioned upon construction of the road along a designated route, is revoked by death of the party before delivery and acceptance of his offer. *Wallace v. Townsend*, 43 Ohio St. 538.

Although a company takes an unauthorized subscription before it has expended ten per cent, or obtained subscriptions of twenty per cent, if it afterward comply with the conditions upon which the subscription is made, the latter becomes absolute and may be enforced. *Armstrong v. Karshner*, 47 Ohio St. 276.

It is not necessary to construct a first class railroad before subscriptions can be collected, unless subscriptions so stipulate. *Id.*

Where a subscription is on condition that the road should be ready for running between specified points, it is not necessary to complete the entire road before enforcing payment; and upon completing it between the designated points the promise to pay is supported by a sufficient consideration. *Leshner v. Karshner*, 47 Ohio St. 302.

§ 3299. Certain property of certain companies exempt from execution—

A company which has begun and partly built its road, but is unable to finish and operate the same for want of means, may take subscriptions conditioned that the proceeds thereof shall not be used or applied upon the debts of the company; and all money or material collected upon such subscriptions, and all material or implements purchased with such money for the construction of the track, houses, depots, and rolling-stock of the company, shall be exempt from execution, or other process or proceedings for the

payment of the debts of the company, so long as such money, material, or implements are used or designed for the construction of such track, houses, depots, and rolling-stock. 64 v. 192, § 1; S. & S. 120.

§ 3300. When a railroad company may aid, lease, or purchase another—Effect of such purchase—

Any company may aid another in the construction of its road, by means of subscription to the capital stock of such company, or otherwise, for the purpose of forming a connection of the roads of the companies, when the road of the company so aided does not and will not when constructed form a competing line; any company may lease or purchase any part or all of a railroad constructed, or in course of construction by another company, if the lines of road of such companies are continuous or connected, and not competing, upon such terms as may be agreed upon between the companies; and after such purchase the purchasing company shall be vested of all the rights and powers in respect to the location, construction, completion and operation of such railroad, and of branches thereto of the company from which it purchased said railroad, including the power to acquire and appropriate property therefor, and shall be subject to all the duties, obligations and restrictions of said company; and any two or more companies whose lines are connected and not competing, may enter into any arrangement for their common benefit consistent with and calculated to promote the object for which they were created. 79 O. L. 35.

A subscription to stock, conditional upon the completion of the road, does not pass by sale and deed of the uncompleted road, subscriptions, and other property, to another company, which completes the road. R. R. Co. v. Hinsdale, 45 Ohio St. 556.

§ 3301. Two-thirds of stockholders of each company must assent to lease or purchase of railroad—

No such aid shall be furnished, nor any purchase or lease perfected, until a meeting of the stockholders of each of the companies has been called for that purpose by the directors thereof, on thirty days' notice to each stockholder, at such place and in such manner as is provided for the annual meetings of the companies, and the holders of at least two-thirds of the stock of each company, in person or by proxy, at such meeting, assent

thereto; and in case of the lease of any railroad situate in whole or in part within this state, the rental reserved and secured for the leased road shall be equal, at least, to the net earnings of the same for the fiscal year next preceding the one in which the lease is made. 79 O. L. 111.

§ 3302. How a dissenting stockholder may sell his stock—

A stockholder who refuses his assent to such sale, lease, or aid by subscription, and signifies the same by notice, in writing, to the purchaser or lessee, within sixty days thereafter, shall be entitled to demand and receive from such purchaser or lessee, previous to the consummation of such sale or lease, the average market value of his stock for six months next preceding the day of the meeting of the companies at which the sale or lease is approved, on the surrender of his stock; and if the stockholder and the purchaser or lessee cannot agree as to the value of the stock, the parties may submit the question to arbitration, which shall be conducted in accordance with the provisions of law regulating arbitrations, so far as the same may be applicable, by three disinterested persons, to be appointed upon the motion of either of the parties, by the judge of the court of common pleas of the county in which the owner of the stock resides, or, in case he is a nonresident of the state, or of any county through or into which the road passes, then in the county in which the principal office of the company is kept. 70 v. 129, § 24.

§ 3303. When court may appoint arbitrators—

If any such stockholder refuse to submit the question to arbitration, the proper judge shall, upon the application of a director of either of the companies parties to the contract, appoint the arbitrators, who shall proceed to ascertain the value of the stock in the same manner as if the question had been submitted by consent of both parties; and if the party owning the stock refuse to receive the amount awarded in any case, the company may deposit the same with the clerk of the court of common pleas of the county in which the arbitration is held, which deposit shall operate the same as if payment were made to the owner of the stock. 70 v. 129, § 24.

§ 3304. Notice of application therefor—how given—

In all cases of arbitration under the two preceding sections, the

party desiring such arbitration shall give the opposite party at least ten days' notice of his intention to apply to the judge for the appointment of arbitrators, which notice shall be served in the same manner as is provided for the service of a summons, and shall specify the time and place of the hearing of the application; but in cases of nonresidents the notice shall be by publication for four consecutive weeks, in some newspaper printed in the county. 70 v. 129, § 24.

§ 3305. Lease of railroad—security required; void if rental not paid—

No company shall lease its road or any part thereof to any other company, whether of this or any other state, as herein-before provided, unless the lessor receive full and adequate security for the payment of the rental and for the preservation of the property of the lessor, in as good condition as on entering into possession, and if the lessee fail to pay such rental promptly when due, such lease shall be void at the option of the lessor; and the company to whom any railroad is leased, if a corporation of any other state, shall be subject to all the restrictions, disabilities, and duties of a railroad company incorporated within this state; and notwithstanding such lease the corporation of this state lessor therein, shall remain liable as if it operated the road itself, and both the lessor and lessee shall be jointly liable upon all rights of action accruing to any person for any negligence or default growing out of the operation and maintenance of such railroad, or in anywise connected therewith, and may be jointly sued in any of the courts of this state of proper jurisdiction, and prosecuted to final judgment therein as in other cases of joint liability; and provided, that service may be had upon said companies, or either of them, by the service of process upon any officer or agent of either of said companies. 80 Ohio L. 116.

A judgment ordering a cancellation of such a lease is a judgment directly affecting a stockholder of the lessor; and he may appeal, under section 5226, if the company refuses to appeal, when it appears that the officers of the company are acting in the interest of the plaintiffs. *Henry v. Jeanes*, 47 Ohio St. 116.

A lease can be rescinded only by the same consent of stockholders required to authorize a lease under section 3301. *Henry v. Railway Co.'s*, 2 N. P. 118 (C. P.)

When lessor company is liable for injury by act of lessee. *Fisher v. R. R. Co.'s*, 3 N. P. 283 (C. P.)

§ 3306. How an extension of a line authorized—

When a company desires to extend the line of its road beyond either of its previously designated termini, the president and directors of the company may submit the question of such extension and change of termini to a meeting of its stockholders, to be called for that purpose by notice published for four consecutive weeks in some newspaper in general circulation in each county through or into which it passes; and if the holders of the majority of the stock, in person or by proxy, so determine, the president and directors, or a majority of them, shall make a certificate of the fact, naming the places of the new terminus or termini of the road, and the county or counties through or into which the extended line will pass, and file it in the office of the secretary of state, and such certificate and extension shall be considered and held to be a part of the original line of the road. 72 v. 70, § 2.

§ 3307. For what purposes capital stock may be increased—

A company may increase its capital stock, as hereinafter provided, whenever in the opinion of the directors the same is insufficient for the construction of its road, or it becomes necessary for the speedy and convenient transaction of its business to construct a second additional track, extend its line, or construct branches thereof, increase its machinery, rolling-stock, depots, or other fixtures, or for the purpose of paying any bonds issued or guaranteed by it, or for the purchase of any railroad within this state which has been or may hereafter be sold by a judicial order or decree, or for completing its line of road, or liquidating or paying off any unfunded or floating debt, or other liabilities incurred in the construction or equipment of its road, or for the purpose of extending the same or constructing branches as authorized, or for either or all the purposes aforesaid. 70 v. 289, § 1; 72 v. 91, § 1.

Where increased stock was issued in payment of interest on the original stock, a bondholder, who had received interest on its bonds, and elected to convert his bonds into stock, was entitled to stock only to the amount of his bonds. *Sutcliffe v. R. R. Co.*, 24 Ohio St. 147.

§ 3308. Proceedings to increase stock—

Before any stock shall be issued under the last section a

majority of the directors shall call a meeting of the stockholders, designating distinctly the time, place, and purpose of the meeting, and the amount of stock required, which meeting shall be held at the principal business office of the company in this state, and notice of which shall be given for at least thirty days previous, by continued publication in at least two newspapers published and of general circulation in the state, and by a like notice, mailed thirty days previous to the time named for the meeting, to each stockholder whose residence is known; and if at such meeting the consent of the holders of a majority of the stock upon which they would be entitled to vote at an election of directors of the company be given, the stock of the company may be increased to such amount as may be decided necessary or requisite for the purposes named in the preceding section. 73 v. 25, § 2.

§ 3309. "Common" or "preferred" stock may be issued; sale thereof—

The increased stock may be "common" or "preferred," as shall be designated in the call for the meeting of the stockholders; if preferred stock be issued, the company may guarantee to the holders thereof semi-annual or quarterly dividends, to an amount not exceeding six per centum per annum, payable at its office, or at such other place as the directors may designate; the stock may be sold at such time and place, either within or without the state, as may be deemed advisable, and the proceeds thereof applied to the purposes for which it is issued; the unpreferred stock of the company shall be entitled to dividends only out of the surplus of the profits, after setting apart a sum sufficient to pay the dividends upon the preferred stock, and the company which issues such preferred stock shall reserve the privilege of redeeming and canceling the same at par, at any time after three years from the date of its issue; and the preferred stock herein provided for may be convertible into bonds of the company, at the option of the parties. 70 v. 289, § 3.

Holders of certificates of preferred stock are stockholders, not creditors, and are not required to list such shares for taxation under sec. 2746. *Miller, Ex'r, v. Ratterman, Treas.*, 47 Ohio St. 141.

A general guaranty of dividends is not a guaranty for payment in any event, but only in the event that dividends are earned. *Id.* And a mortgage to secure the same is incident to the principal obligation, and the

terms and purport of the certificates, when they make the act authorizing the transaction a part of the certificates by reference, will be held to express the real intent of the parties. *Id.* Such certificate of preferred stock may stipulate that the holders shall not have the right to vote the same. *Id.*

Holders of preferred stock are subject to statutory liability equally with common stockholders. *Railroad Co. v. Smith*, 25 B. 179.

§ 3309a. Borrowing money and issuing securities in lieu of issuing preferred stock; bonds of consolidated company in excess of capital stock—Issue, purpose, etc., of bonds of consolidated company—How securities expressed and disposed of; application of proceeds—Street railroads.

Any railroad company now or hereafter organized under the laws of this state, and any such company which now is or shall hereafter be consolidated with other companies, as provided in sections *thirty-three hundred and seventy-nine, thirty-three hundred and eighty, thirty-three hundred and eighty-one and thirty-three hundred and eighty-two* of the Revised Statutes, may, at a meeting of its stockholders, called as provided in section *thirty-three hundred and eight*, in lieu of issuing preferred stock as provided in section *thirty-three hundred and nine*, provide for borrowing money to locate, construct and equip its proposed line of railway, or for the purpose of leasing or purchasing and equipping branch or connecting roads constructed or in process of construction, not exceeding ten miles in length, or for redeeming or exchanging any part or all of its previously issued bonds, or for refunding its floating debt, or for any or all of said purposes, in such an amount as it may deem necessary, not exceeding its authorized capital stock, but companies formed by consolidation of one or more companies of this state or of this state with one or more companies of other states as provided in sections *thirty-three hundred and seventy-nine* and *thirty-three hundred and eighty*, may issue bonds in excess of such capital stock and at such rates of interest as may be agreed upon between the respective parties not exceeding seven per cent. per annum, payable semi-annually or quarterly, as they may direct, and may execute and issue securities therefor, and to secure the payment thereof may pledge the entire property and net income of such company by mortgage or otherwise, and any railroad company formed by the

consolidation of two or more railroad companies existing under the laws of this state or any railroad company formed by the consolidation of one or more companies created by or existing under the laws of this state and any other state or states, with a railroad company or companies of this state or any other state, may, from time to time, if authorized by the vote in person or proxy of holders of two-thirds (2-3) of the full paid-up stock of such consolidated railroad company present and voting at meetings of stockholders, called as aforesaid, issue its bonds, convertible or otherwise, into stock, bearing a rate of interest not exceeding six per centum per annum, for one or more of the following purposes: Paying, redeeming or funding debts or obligations assumed, incurred or created by it or either of its predecessors or constituent companies, compromising claims made against it or either of its predecessors or constituent companies, purchasing the whole or any part of any railroad held by it under lease to, or operating contract with it or either of its predecessors or constituent companies acquiring the whole or any part of the stock or bonds of any railroad company owning a railroad held by such consolidated railroad company under lease or operating contract, acquiring the whole or any part of the bonds, notes or other obligations of any other railroad company of this or any other state, the whole or a majority of whose capital stock shall be held by such consolidated railroad company, completing, extending, improving, maintaining or operating its road, branches or lines, held under lease or contract, laying double or additional track, purchasing rolling stock, building depots, elevators or shops, and generally for any purpose needed in its business, and may, if the directors shall so determine, secure such issue or issues of bonds by mortgage or pledge of any or all of its real or personal estate or franchise or income. Said securities may be expressed in dollars or in the currency of the country where disposed of and may be disposed of upon such terms and at such prices as may be agreed upon between the respective parties not inconsistent with the laws of this state. The proceeds of sale of such securities shall be applied only as now required by law; provided, that nothing in this section or in the sections of the Revised Statutes relating to railroad companies, prior to section *thirty-four hundred and thirty-seven*, other than in sections *thirty-two hundred and eighty-seven*, *thirty-two hundred and eighty-eight*,

and *thirty-two hundred and eighty-nine* shall be construed as affecting street railroads. 92 O. L. 415.

§ 3309b. Classification of capital stock—

Any railroad company hereafter formed may, in its article of incorporation, provide for the division of its capital stock into common stock and classes of preferred stock by stating therein the amount of each kind and class of stock, the par value of the respective shares thereof, and the vote which shares of each class shall have. And it may further provide in such articles, terms and conditions of such preferred stock in addition to and not inconsistent with the provisions of section *thirty-three hundred and nine*. 88 O. L. 267.

§ 3310. Facts to be certified to the secretary of state—

Within ten days after such meeting, the president and secretary of the company shall make an abstract, stating the whole amount of pre-existing capital stock, the amount authorized, the number of shares of stock upon which all the installments called for by the board of directors has been paid, and the vote at the meeting, and add a certificate that the provisions of the two preceding sections have been fully complied with; and they shall make affidavit to such abstract and statement, and file the same in the office of the secretary of state, who shall cause the same to be recorded. 73 v. 25. § 4.

§ 3310-1. Electricity as motive power upon railroads—

Upon any railroad heretofore or hereafter constructed in this state, electricity may be used as a motive power in the propulsion of cars; provided, however, that before any line of poles and wires shall be constructed through or along the streets, alleys or public grounds of any municipal corporation, plans of construction shall be submitted to and approved by the council of such municipal corporation. 91 O. L. 397.

REGULATIONS.

§ 3311. Railroad companies must establish a principal office—

Each company shall, as soon as convenient after its organization, establish a principal or [general] office on some point on

the line of its road (or on the line of any road within this state with which it connects or has running arrangements), and may change the same at pleasure, and shall give public notice of such establishment or change, in some newspaper published on its line, within the state; and the office of the president, secretary, and treasurer of the company shall be kept at such principal or general office, or at some other point on the line of the road of the company within the state, and a record kept there of all the proceedings of the company, to be open at reasonable hours to the inspection of any stockholder of the company. 77 O. L. 153; S. & C. 279.

As to changing location of principal place of business, see *State v. Coal Co.*, 4 N. P. 115 (C. P.).

§ 3312.

[Consolidated with section *thirty-three hundred and eleven*. 77 O. L. 153.]

§ 3313. Securities sold to directors under par, void—

All capital stock, bonds, notes, or other securities of a company, purchased of the company by a director thereof, either directly or indirectly, for less than the par value thereof, shall be null and void. 69 v. 173, § 2.

§ 3314. When directors are personally liable to stockholders—

The directors shall be liable in their individual capacity to the stockholders for any damage sustained by the stockholders by reason of the negligence, mismanagement or unfaithfulness in the discharge of their duties; but a director may exonerate himself by entering his protest upon the record against any act done without his concurrence, from which injury is feared, and forthwith publishing the same for three weeks in some newspaper printed and of general circulation in the county in which is the principal office of the company. 52 v. 91, § 3; S. & C. 370.

§ 3315. Certain persons ineligible to office or appointment—

No person who is a stockholder, owner or part owner of any express, dispatch fast freight or transportation company, whether

incorporated or not, which has for its object, or one of its objects, the shipment of freight or the transportation of persons over any railroad in the United States, or who is in any way pecuniarily interested in any company or partnership formed for any such or like purpose, shall perform the duties of, or be elected or appointed to, any office of profit or trust in any railroad company, or employed as freight or ticket agent thereof; and all such persons shall be ineligible to any such office or appointment. 63 v. 156, § 1; S. & S. 116.

§ 3316. Acts of such persons void, and penalties—

If any person be elected to an office or appointed to a position, or perform duties, in violation of the preceding section, all his official acts shall be null and void; and for every day that he exercises, or attempts to exercise, the functions of such office or appointment, he shall forfeit and pay the sum of fifty dollars, to be recovered at the suit of any stockholder of the company, in the name of the company, one-half of which shall go into the treasury of the company and the other to the stockholder prosecuting. 63 v. 156, § 2; S. & S. 116.

§ 3317. How authority obtained to bridge canals or navigable waters—

When the line of the road of a company crosses a canal, or any navigable water, the company shall file with the board of public works, or with the acting commissioner thereof having charge of the public works where such crossing is proposed, the plan of the bridge, and other fixtures for crossing such canal or navigable water, which shall designate the place of crossing; if the board or acting commissioner approve such plan, he shall notify the company, in writing, of such approval; but if the board or acting commissioner disapprove such plan, or fail to approve the same within twenty days from the filing thereof, the company may apply to the court of common pleas, or a judge thereof in vacation, and upon reasonable notice being given to the members of the board of public works, or said acting commissioner, the court or judge shall, upon good cause shown, appoint a competent disinterested engineer, not a resident of any county through which the road passes, to examine such crossing, and prescribe the plan and condition thereof, so as not to impede navigation; such engineer shall, within twenty days from his

appointment, make his return to the court of common pleas of the county wherein such crossing is to be made, subject to exception by either party; thereupon the court shall, at the next term after the filing of the return, proceed to examine the return, and approve and confirm the same, unless good cause be shown against such approval; and such order of confirmation shall be sufficient authority for the erection, use and occupancy of such bridge, in accordance with such plan; but no company shall construct over any canal any permanent bridge less than ten feet in the clear above the top water-line of the canal; and the piers and abutments of such bridge shall be placed so as not in any manner to contract the width of the canal, or interfere with free passage on the tow-path; but this section shall not be construed to prevent the construction or continuance of draw-bridges which do not interrupt navigation. 50 v. 274, § 20; 50 v. 205, §§ 4, 5; S. & C. 279, 319.

§ 3318. Certain bridges established—

All railroad bridges erected prior to May 1, 1852, over any navigable canal, feeder, slack-water improvement, river, stream, lake or reservoir, not less than ten feet in the clear above the top water-line, shall remain undisturbed by the board of public works. 50 v. 205, § 4; S. & C. 319.

§ 3319. Attorney-general to enforce section, etc.—

If a company refuse to comply with any of the provisions of section *thirty-three hundred and seventeen*, the attorney-general, on being notified thereof, shall immediately institute proper legal proceedings, in the name of the state, against such company, for the purpose of enforcing the provisions thereof. 50 v. 205, § 5; S. & C. 319.

§ 3320. Passenger trains must stop at certain stations—

Each company shall cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city, or village, containing over three thousand inhabitants, for a time sufficient to receive and let off passengers; if a company, or any agent or employe thereof, violate, or cause or permit to be violated, this provision, such company, agent, or employe shall be liable to a forfeiture of not more than one hundred nor less than twenty-five dollars, to be recov-

ered in an action in the name of the state, upon the complaint of any person, before a justice of the peace of the county in which the violation occurs, for the benefit of the general fund of the county; and in all cases in which a forfeiture occurs under the provisions of this section, the company whose agent or employe caused or permitted such violation shall be liable for the amount of the forfeiture, and the conductor in charge of such train shall be held, *prima facie*, to have caused the violation. 86 O. L. 291.

Railroad company cannot make regulations contrary to the statute. Penna. Co. v. Wentz, 37 Ohio St. 333.

This section is not a violation of that clause of the constitution of the United States giving congress power to regulate commerce among the several states. L. S. & M. S. Ry. Co. v. State, 8 C. C. 220; affirmed, 37 B. 196, and 173 U. S. 285.

§ 3321. Land covered by right of way not to be taxed to owners—

Each company owning and occupying any right of way or easement in lands, either by agreement with the owners, or by virtue of any appropriation proceeding, shall present to the auditor of the county in which such land is situate a statement of the quantity of land embraced within such right of way or easement, and such quantity shall be deducted by the auditor from the land on the tax duplicate, so that the owners thereof shall not be required to pay taxes thereon; a company hereafter becoming the owner and occupant of any such right of way or easement shall, within six months thereafter, present such statement to the auditor; and upon the failure of the company to make such statement, the owner of the land may make the same. 72 v. 71, § 8.

§ 3321-1. Time of arrival of trains—

That every company or person operating a railroad within this state shall, immediately after the taking effect of this act, cause to be placed in a conspicuous place in each passenger depot of such company, located at any station in this state at which there is a telegraph office, a blackboard, at least four feet in length and two feet in width, upon which board such company or person shall cause to be written, at least ten minutes before the schedule time for the arrival of each passenger train stopping regularly

upon such road at such station, the fact whether such train is on schedule time or not, and if late, how much. 83 O. L. 118.

§ 3321-2. Penalty.

That for each violation of the provisions of this act, such company or person so neglecting or refusing to comply with the provisions of this act, shall forfeit and pay the sum of ten dollars (\$10.00), to be recovered in a civil action in the name of the State of Ohio, one-half of which shall go to the party commencing proceedings, and the remainder shall be paid over to the treasurer of the township, village or city in which such proceedings are had. 83 O. L. 118.

§ 3322. When release of right of way papers to be recorded—

When the grant of such right of way or easement is not in the form of a lawfully-executed deed or lease, the recorder of the county where the land is situate shall, upon the request of the company owning such right of way or easement, record such grant in the record-book of leases, and index the same; and such record, or a copy thereof duly certified by the recorder, shall be received in evidence in all courts and places, in the same manner and to the same effect as the original; but the correctness of such record or copy may be impeached by any interested party, by competent proof; and the recorder shall be entitled to the usual fee for recording such grants, and certifying copies thereof. 72 v. 71, § 8.

§ 3323. Must erect sign-boards at road crossings—

Each company shall erect, at all points where its road crosses a public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign, with large and distinct letters placed thereon, to give notice of the proximity of the railroad, and warn persons to be on the lookout for the locomotive; and a company which neglects or refuses to comply with this provision shall be liable in damages for all injuries which occur to persons or property from such neglect or refusal. 50 v. 274, § 18; S. & C. 279.

§ 3324. Railroad companies must construct fences, crossings and cattle-guards—

A company or person having control or management of a railroad shall construct, or cause to be constructed, and maintain in good repair on each side of such road, along the line of the lands of the company owning or operating the same, a fence sufficient to turn stock; and when such fence is constructed out of barbed wire, or separate lateral strands not connected with interwoven wire, or cross perpendicular wire not more than fifteen inches apart, there shall be securely fastened to the posts, at the top of the same, at right angles thereto, at least one board not less than one and one-eighth inches thick and five inches wide, and extending the entire length thereof; and before operating such road shall cause to be maintained at every point where any public road, street, lane or highway used by the public, crosses such railroad, safe and sufficient crossings, and on each side of such crossings cattle-guards sufficient to prevent domestic animals from going upon such railroad; and such company or person shall be liable for all damages sustained in person or property in any manner by reason of the want or insufficiency of any such fence, crossing, or cattle-guard, or any neglect or carelessness in the construction thereof, or in keeping the same in repair. That provided, where any road now in process of construction, or any proposed road, passes through any inclosed land, that the company or person having control of any such road shall, during the construction of the same, provide suitable crossings for the owner or occupant of each farm, and make and keep in repair fences along the line of such road through such inclosed fields, and protect any crops growing thereon; and further provided, that where the company or person agrees, with the owner of the lands through which any railroad passes, that said owner shall build and keep in repair any portion of the fencing, and should said fencing be destroyed or damaged by fire from passing trains, said company or person owning or operating such road shall rebuild or repair said fence, provided the property-holder should demand it; and provided, that if any railroad company shall fail or refuse to construct any fence in the manner hereinbefore provided, within six months after the passage of this act, and after having received written notice so to do from the owner or occupant of any lands through which the road may pass, [that]

then said owner or occupant may, after thirty days from the time of serving such notice upon the agent of such company nearest said lands, proceed to construct the same, and the company shall be liable to such person for the cost thereof. This act shall apply to all fences now built, as well as those hereafter constructed. 91 O. L. 297.

A railroad company, like any other land proprietor, has a right to the free, exclusive, and unmolested use of its railroad track, not exempt, however, from the duty of so using its own property as to do no unnecessary injury to another, and bound, when using its property in a mode which may result in injury to another, to the exercise of due care. *Railroad Co. v. Lawrence*, 13 Ohio St. 66.

The use by a railroad company on its land, of engines and cars, running at a high rate of speed, though dangerous, is a reasonable use of land, because it is for a proper object, and a highly beneficial purpose, and danger may be avoided by proper care; and a railroad company, in determining the rate of speed at which its trains shall run—such rate being otherwise reasonable and proper, in view of the object to be accomplished—is not bound to consider the increased risk to cattle running at large in the vicinity of its track, and lessen the speed on that account. *Railroad Co. v. Lawrence*, *supra*.

The first and paramount duty of the agents of a railroad company in charge of a train is to watch over the safety of the persons and property in their charge on the train; subject to which, it is their duty to use reasonable care to avoid unnecessary injury to animals straying upon the road. *Kerwhacker v. Railroad Co.*, 3 Ohio St. 172; *Railroad Co. v. Elliott*, 4 Ohio St. 474; *Railroad Co. v. Lawrence*, 13 Ohio St. 66.

The servants of a railroad company, operating its train, are bound to use ordinary care to avoid injury to domestic animals trespassing on the railroad; and where such trespassing animals were killed by a train, if the servants of the company having the train in charge, by the exercise of ordinary care, and having due regard to their duties for the safety of the persons and property in their charge, could have seen such animals on the track in time to have saved them, it was their duty to have done so; and for their negligence in this respect, when the owner is not guilty of contributing negligence, the company will be liable. *Railroad Co. v. Smith*, 22 Ohio St. 227.

It being the duty of a railroad company, under the act of March 25, 1859 (56 v. 62), to keep its road properly fenced, it does not discharge that duty by contracting with another party to perform it, when the performance is insufficient; and the owner of stock which has escaped, through that part of a partition fence which it was his duty to maintain, but without negligence on his part, onto the lands of an adjacent proprietor who had agreed with the railroad company to fence its road through his lands, which he had insufficiently done, and thence, because of such insufficient fences, onto the railroad track, where the stock was killed by a train: *Held*, that the company was liable, unless its agents managing the train used more than ordinary care to prevent the injury (*Gill v. Railway Co.*, 27 Ohio St. 240); but

when the owner of land, through which a railroad passes, agrees, for a valuable consideration, with the railroad company, to build and keep up good and sufficient fences on both sides of the road through his lands, and fails to do so, and, on account of the insufficiency of such fences, his animals stray upon the track, and are injured, he is not entitled to recover for such injury, although the insufficiency of the fences was caused by casualty, and without negligence on his part, unless the injury is shown to have been intentional, or the result of gross carelessness on the part of the agents and servants of the company. *Railway Co. v. Smith*, 26 Ohio St. 124; *Railroad Co. v. Waterson*, 4 Ohio St. 424; *Railroad Co. v. Wessel*, 55 Ohio St. 155.

A land-owner conveyed to a railroad company a right of way over his lands, and covenanted for himself, his heirs and assigns, to erect and maintain a fence on each side of the right of way, and reserved the right to pass and repass over the same in such way and at such times as would not interfere with the running of railroad trains, and afterward conveyed the land in fee; and in an action by a tenant of the grantee against the company for killing his horse, which strayed onto the railroad track from the land, because no fence had ever been erected, it was held that the covenant ran with the land, and affected alike the grantee and his tenant, and that the tenant could derive no advantage from its breach, and that he could not claim from the railroad company a higher degree of care to avoid injury to his horse, being on the track through the land, than if the covenant had been kept. *Easter v. Railroad Co.*, 14 Ohio St. 48.

The liability imposed by the act of May 25, 1859, *supra*, upon railroad companies, for damages which result to domestic animals from the want or insufficiency of fences, road-crossings, or cattle-guards, or from any carelessness of the company or its agents, is not in the nature of a penalty; and the same liability for neglecting to discharge the duty to build fences, etc., imposed by that act, would have arisen by construction, and upon common law principles, if the statute had been silent on the subject; and the owner of a cow, who permitted her to run at large in violation of the act of April 13, 1865 (62 v. 185), which strayed upon the uninclosed track of a railroad company, and was killed by a train, without the fault of the company or its agents in running the train, is not in a situation to demand compensation, and cannot recover from the company damages for the loss of the cow, *Railway Co. v. Methven*, 21 Ohio St. 586; but the rule is otherwise where cattle were at large without the omission of reasonable care on the part of the owner, and without his fault. *Railroad Co. v. Stephenson*, 24 Ohio St. 48, and *R. R. Co. v. Howard*, 40 Ohio St. 6.

Inclosures of railroads, as required by the act of March 25, 1859, *supra*, must be separate and distinct from the inclosures of adjoining proprietors; and the obligation to construct and maintain fences upon both sides of railroads imposed by that act is not limited to owners and occupiers of adjoining lands, but extends to the public generally, *Railroad Co. v. Stephenson*, 24 Ohio St. 48; and that act, and the amendments thereto, require the construction and maintenance of such fences within the limits of cities and villages where they do not obstruct streets, highways, and other public grounds. *Railroad Co. v. McConnell*, 26 Ohio St. 57.

Under the act of March 25, 1859, *supra*, when the owner of lands adjacent

to a railroad constructs and maintains a good and sufficient fence inclosing his own lands, in such manner that it may be made to answer the purpose of inclosing the railroad also, the fact that compensation was not paid for the right of way through such lands will not prevent the company from joining its fences to the fence constructed by such land-owner, so as to inclose its road; and when the railroad is already inclosed by such joining of fencing, no additional fence need be constructed between the railroad and such inclosed lands. *Haxton v. Railway Co.*, 26 Ohio St. 214.

The operators of a railroad train have an unqualified right to carry a headlight upon the train at night, when necessary for the safety of the lives and property embarked upon the train; and it is error to instruct a jury that such right depends upon its exercise not endangering cattle that stray upon the track. *Railroad Co. v. Schruyhart*, 10 Ohio St. 116.

No liability for injury to trespassing animals arose from failure to construct fence within six months from passage of act. *Railroad Co. v. McElroy*, 35 Ohio St. 147.

Railroad company cannot claim compensation for making cattle-guards at crossing established after passage of act. *Railway Co. v. Sharpe*, 38 Ohio St. 150.

Railroad company must maintain fences. *Railway Co. v. Smith*, 38 Ohio St. 410.

For liability under agreement to maintain fence, see *Railway Co. v. Heiskell*, 38 Ohio St. 666.

Where a railroad crosses streets within limits of a municipal corporation, the railroad company is bound to construct and maintain safe and sufficient crossings and approaches thereto; this includes necessary bridges where track and street are not on same level; and where necessary approaches to such bridge compel making of embankment so high as to cause injury to the easement of access to abutting lot, the company will be liable to the owner for damages, even though the municipal corporation prescribed the height and dimensions of the bridge and height and grade of approaches thereto. *McNulta, Receiver, v. Ralston*, 5 C. C. 330.

Statute applies in case of a private road crossing the track. *R. R. Co. v. Cunningham*, 39 Ohio St. 327.

Railroad company must build fences although it had a written agreement with its grantor of the right of way that he should build them, where a subsequent purchaser had no actual or constructive notice of such agreement; and the said agreement not being recorded, purchaser had no constructive notice by mere use and occupation of the right of way for a railroad. *Railway v. Bosworth*, 46 Ohio St. 81.

Where, in action for injury to stock, defense is that expense of fencing was included in verdict in appropriation proceedings, such defense is not established by a record of such proceedings which is silent on the subject. *R. R. Co. v. Hoffhines*, 46 Ohio St. 643. The obligation imposed by this section is not for benefit of occupiers of abutting lands only. *Ry. Co. v. Allen*, 40 Ohio St. 206. When railroad company may be excused on ground of necessity from maintaining cattle-guards at crossings. *R. R. Co. v. Newbrander*, 40 Ohio St. 15.

A contract by a railroad company in acquiring right of way, to erect and keep up fences, runs with the land. *Huston v. Ry. Co.*, 21 Ohio St. 235.

For liability of railroad company for defective fences, see *B. & O. R. Co. v. Schultz*, 43 Ohio St. 270, and *Millhame v. The Railway Co.*, 7 C. C. 466.

Where owner of animals is bound to maintain gate, and his animals trespass by reason of his neglect to perform that duty, company is liable for injury only for intentional act, or gross negligence of those operating the train. *R. R. Co. v. Weisel*, 55 Ohio St. 155.

Failure to construct cattle-guards is not negligence where such omission is necessary. *Pierce, Receiver, v. Andrews*, 13 C. C. 513.

Where a land-owner agreed to convey a strip of land for \$150 and the construction of a cattle-pass under the track, but the deed was silent as to the cattle-pass, purchasers of the railroad on foreclosure are put on inquiry by the possession of the cattle-pass by the land-owner; and though the contract of the railroad company was not to maintain the cattle-pass, it was a continuing one, and neither the railroad company nor the purchasers on foreclosure have the right to fill it up. *Lame v. Railroad Co.*, 12 C. C. 743.

Where a railway company conveys land along its right of way, "subject to the condition that the said grantee, his heirs and assigns, shall make and maintain good and sufficient fences, . . . which condition and obligation shall be perpetually binding on the owners of the land:" *Held*, that the grantee, by accepting the deed, enters into an express undertaking to perform said condition, and such undertaking runs with the land and becomes obligatory upon a subsequent owner by purchase from such grantee, and that after such conveyance by the grantee the company will not have a right of action against him for non-performance to make and maintain fences between the right of way and the land sold. *Hickey v. Ry. Co.*, 51 Ohio St. 40.

Crossings may be sufficient if safe, although they are inclines. *L. S. & M. S. Ry. Co. v. Brazzill*, 13 C. C. 622.

§ 3325. When land-owners may construct fence at company's expense—

If such company or person neglect or refuse to construct such fence, as provided in the preceding section, the owner of any land abutting on the line of the land of the railroad may construct the fence therein provided for, so far as his land abuts on the railroad lands; and when he has completed the same, he may present for payment, to the agent of the company for receiving and shipping freight at the station nearest to the tract of land so fenced, an itemized account of the expense thereof, including materials and labor; and if such company or person neglect or refuse, for thirty days, to pay such account, such land-owner may recover the reasonable cost of such fence from the owner of the road, in any court having jurisdiction of the same. 71 v. 85, § 1.

Under the act of April 18, 1874 (71 v. 85), an action will not lie in favor of a land-owner against a railroad company to recover the cost of building a fence along the line of its railroad, when the former owner of the land, for a consideration, released the right of way for the railroad over the lands, and agreed to build and keep up fences on both sides of the line of the road. *Warner v. Railroad Co.*, 31 Ohio St. 265.

§ 3326. Company to keep fence in repair.—

When the fence is completed the company shall keep it in good repair; and if any such company or person permit any part of the fence on the line of its road to get out of repair so that it will not turn stock, the owner of the land abutting on the railroad lands where the fence is out of repair, may notify the agent of the company for receiving and shipping freight at the station on the road nearest to the place where the fence is out of repair, that a portion of the fence on the line of the road is out of repair, stating where, how, and the probable cost of repairing the same; and if such company or person fail, for twenty-four hours thereafter, to repair the fence so that it will turn stock, the owner of the land may furnish materials and repair the same, and present to such agent, for payment, an itemized account of the expense thereof, including materials and labor, and if the same be not paid within thirty days thereafter, such land-owner may recover from the owner of the road the reasonable expense of such repairs, before any court having jurisdiction thereof. 71 v. 85, § 1.

§ 3327. When private crossings must be built—

A person owning fifteen or more acres of land in one body through which any such railroad passes, and which is so situate that he cannot use a crossing in a public street, road, lane or highway, in passing from his land on one side of the railroad to that on the other side without great inconvenience, the company or person operating the road shall, at the request of the land-owner, within four months after such request, at the expense of such company or person, construct a good and sufficient private crossing across the railroad and the lands occupied by the company, between the two pieces of land of the land-owner, to enable him to pass with a loaded team, and over which he shall have the privilege of passing at all times when such company or person is not using the railroad at the crossing, or so near thereto as to render crossing thereat dangerous. 71 v. 85, § 1.

Construed. *Jones Fertilizing Co. v. Ry. Co.*, 7 N. P. 245 (C. P.).

§ 3328. When land-owner may build it at company's expense—

If such company or person neglect, for four months after request by any such land-owner for that purpose, to construct a good and sufficient private crossing as provided in the preceding section, such land-owner may, after having given reasonable notice to the agent of the company for receiving and shipping freight at the station on the railroad nearest to the land where it is proposed to construct such private crossing, of the time when such land-owner will proceed to construct such crossing, enter upon the lands of the company, at any point he may desire between the two pieces of his land, and construct a good and sufficient private crossing; and such company or person shall be liable to him for all the reasonable expense thereof, not exceeding the sum of fifty dollars, and he may recover the same in an action against such company or person, before any court having jurisdiction thereof. 71 v. 85, § 1.

§ 3329. When five preceding sections do not apply—

The provisions of the five preceding sections, relating to fences and private crossings, shall not apply to any case in which compensation for building a fence or a private crossing has been or may hereafter be taken into consideration, and estimated as a part of the consideration to be paid for the right of way, so far as the fence, or right to private crossing, has been or may be settled or paid for; nor shall said sections be held to affect, in any manner, any contract or agreement between any railroad company, or person having the control and management of a railroad, and the proprietors or occupants of lands adjoining, for the construction and maintenance of fences, cattle-guards and railroad crossings. 71 v. 85, § 1; 56 v. 62, § 4; S. & C. 332.

Under the first clause of this section: *Held*, that where stock of a third person gets upon the track by reason of fences not being built by land-owner, the railroad company is not, in absence of negligence in running its trains, liable to the owner for injury to them—duty of the company in such case is to use ordinary care and prudence to avoid injuring the animals. *Ry. Co. v. Wood*, 47 Ohio St. 431.

§ 3330. When company may build fence at land-owner's expense—

If an owner of lands, abutting on the line of the lands of a company, who is legally bound in any manner to build or repair

the fence dividing his lands from the lands of the company, neglect or refuse to build or repair such fence within the time in which he is bound to build or repair the same, the company may build or repair such fence, and present an itemized account of the cost of labor and materials expended in such construction or repair, to the person bound to build or repair the fence, for payment; and, if the same be not settled or paid within thirty days thereafter, the company may recover from such person the reasonable cost of such labor and materials, before any court having jurisdiction thereof. 71 v. 85, § 1.

§ 3331. Penalties for not constructing and repairing fences, etc.—

A company or person having the control and management of a railroad, neglecting or refusing to construct fences, cattle-guards, or public crossings, or to keep the same in repair, as prescribed in section *thirty-three hundred and twenty-four*, after thirty days' previous notice or request to do the same, made in writing by any person, shall forfeit and pay, for each and every day such company or person so refuses or neglects, any sum not exceeding fifty dollars per day, to be recovered in a civil action, in the name of the state, for the use of the county in which suit is brought. 56 v. 62, § 5; S. & C. 333

§ 3332. Right of land-owner to use culvert, etc., for cattle-way—

Any owner of land through which a railroad is constructed, and upon which there is a culvert, water-way, or opening through the embankment of the railroad, of sufficient height for such purpose, may use such culvert, water-way, or opening, for the purpose of a stock or cattle-way, under the track of the road, so as to permit stock to pass and repass; but the land-owner shall build and maintain all necessary fences on both sides of said opening, and shall not, by use or otherwise, permit the foundations of any structures about such opening to be injured or interfered with.

§ 3333. Railroad crossings, how to be made—Crossing of trains, how to be regulated—When trains may cross without stopping—

When the tracks of two railroads cross each other, or in any way connect at a common grade, the crossings shall be made and kept in repair, and watchmen maintained thereat, at the joint expense of the companies owning the tracks; all trains or engines passing over such tracks shall come to a full stop not nearer than two hundred feet, nor further than eight hundred feet from the crossing, and shall not cross until signaled so to do by the watchman, nor until the way is clear, and when two passenger or freight trains approach the crossing at the same time, the train on the road first built shall have precedence if the tracks are both main tracks over which all passengers and freights on the road are transported; but if only one track is such main track, and the other is a side or depot track, the train on the main track shall take precedence; and if one of the trains is a passenger train and the other a freight train, the former shall take precedence, and regular trains on time shall take precedence over trains of the same grade not on time, and engines with cars attached, not on time, shall take precedence of engines without cars attached, not on time: provided, however, and in case such two railroads crossing each other, or in any way connecting at a common grade, shall by any works or fixtures to be erected by them render it safe to pass over said crossings without stopping, and such works and fixtures shall first be approved by the commissioner of railroads and telegraphs, and the plan of said works and fixtures for such crossing, designating the plan of crossing shall have been filed with such commissioner of railroads and telegraphs, then, and in that case, the provisions of said section *thirty-three hundred and thirty-three*, and the provisions of sections *thirty-three hundred and thirty-four*, *thirty-three hundred and thirty-five* shall not apply; but if such commissioner of railroads and telegraphs shall disapprove such plan, or fail to approve the same within twenty days from the filing thereof, such companies may apply in the county where said crossing is situated, to the court of common pleas, or to a judge thereof in vacation, in the manner provided in section *thirty-three hundred and seventeen*, and the same proceedings shall be had, and with the same effect as provided in said last named section. 79 O. L. 95; S. & C. 372a.

The state has reserved to itself the right to enact police laws necessary to secure the lives and property of its citizens, and among the powers thus reserved, and which must inhere in the state, is that of prescribing reasonable regulations for the government of railroad corporations in regard to the manner in which they shall exercise their corporate franchises in running their trains, so as to avoid danger to the lives and property of its citizens; and the act of March 24, 1860 (57 v. 106), is a valid exercise of this power to prevent collisions at railroad crossings. *Railway Co. v. Railway Co.*, 30 Ohio St. 604.

A railroad corporation accepts its charter, and maintains and operates corporate property as a railroad, subject to this inherent power in the state to adopt such regulations whenever the public exigencies and the safety of the community may, in the judgment of the law-making power, require them, and subject also to the power of the state to authorize the construction of other railroads across its track whenever the public welfare may require; and neither the priority of one charter over the other, nor the prior location or construction of a railroad thereunder, affects this right; and the right of one railroad corporation to cross the track of another, in constructing and operating its road, is derived by grant of its franchise so to do from the state, and not by purchase or appropriation from the road first located and constructed; and the latter has no vested exclusive right to such crossing for its use, as against the right of the public to a crossing. *Ib.*

The right of a railroad corporation to hold land is not an unqualified right, but is limited to the uses and purposes of the corporation, and the land is to be held for the purposes of the grant for public uses; and the title which it has in its right of way is a qualified title, subject to the equal right of another railroad corporation to cross the same with its track, provided compensation be made, as required in the case of individuals, for the property, or the interests therein, appropriated *Ib.*

The act of March 24, 1860, *supra*, imposes on both companies the expense of making and keeping up such crossing as therein required, without regard to the date of their respective charters, or the location or construction of their respective roads. *Ib.*

In a proceeding under the statute by one corporation to appropriate a strip of land across the track of another, to be used in common by each as a railroad crossing at a common grade, the owner of such track is entitled to compensation for the property or interest therein actually appropriated, and for such consequential damages, not provided for by the act of March 24, 1860, *supra*, as are the direct and proximate consequence of such appropriation, but has no right to recover, as consequential damages, the additional expense necessary in operating its road, caused by complying with the requirements of the act. *Ib.*

A lessee company operating a railroad is one "owning the tracks" under this section, and is liable for its proportion of expense of keeping crossing in repair and maintaining watchmen. *Balt. & O. R. R. Co. v. Walker*, 45 Ohio St. 577.

§ 3334. Rules to be made and published—

The managing agent or superintendent of every railroad shall establish, and publish to all the employes on the road, such rules and regulations as shall in all cases, secure strict compliance with the provisions of the foregoing section, and shall republish such rules and regulations on each time table or card issued to the employes on the road; if such managing agent or superintendent fail or neglect to establish and publish such rules and regulations, or to republish the same on each time table or card issued to the employes of the road, he shall be personally liable for every such neglect or refusal to a penalty of one hundred dollars, to be recovered, together with costs, in an action against him in favor of the state, to be brought in the court of common pleas of any county wherein any such crossing is; and such agent or superintendent, and the company of which he is agent or superintendent, shall also be liable in damages to any person or company injured in person or property by an accident arising from such failure or neglect. 57 v. 106, § 2; S. & C. 372a.

In action against railway company for negligently causing death of employe, plaintiff must show negligence on part of company presumedly causing death. Conductor can exact from company only such care in inspection of cars as is usual among those operating railroads. Columbus, etc., Ry. Co. v. Celley, Adm'r, 1 C. C. 267.

Superintendent of a railroad company, unless vested with special authority, has no power to employ physician and bind the company for payment, to attend to passenger injured on road, and such authority is not necessarily to be inferred from title of superintendent. Ry. Co. v. Wiseman, 1 C. C. 246.

A railroad company is under obligation to give such care to a passenger, who becomes sick on its train, as is fairly practicable, with the facilities at hand, without thereby unduly delaying its train, or unreasonably interfering with the safety and comfort of its other passengers. Ry. Co. v. Salman, 52 Ohio St. 558; affirming 9 C. C. 230.

Corporations are liable for tortious acts of servants and agents acting within the scope of their employment. R. R. Co. v. Slusser, 19 Ohio St. 157; R. R. Co. v. Dunn, 19 Ohio St. 162; R. R. Co. v. Shires, 18 Ohio St. 255.

Railroad company is not liable for injury by train to person on track where there is no public crossing, unless caused by wanton, willful negligence of employes in charge of train. Driscoll, Adm'r, v. Ry. Co., 1 C. C. 493. See also 34 B. 229. A conductor of a delayed passenger train may provide other means of transportation to his passengers, but not to others, and if he does so and such persons are injured the company is not liable. R. R. Co. v. Morley, 4 C. C. 559.

Suit for damages for wrongful death occurring in Ohio may be maintained

in this state by plaintiff residing in Pennsylvania. *Essenwine v. Penna. Co.*, 25 B. 396.

Where the employe of a railroad company is killed, after working hours and while returning home, by the negligence of the company's servants, the company is liable; the deceased stood in the same relation to the company as any other citizen. *Railroad Co. v. O'Brien, Adm'r*, 25 B. 90. See also *L. S. & M. S. Ry. Co. v. Man*, 9 C. C. 173.

Although person may be guilty of negligence, causing a fall, the railroad company owes him a duty to save him from further injury—and notice to brakeman tends to show notice to the company of the condition of such person. *Kassen, Adm'r, v. Railroad Co.*, 19 B. 25. See *R. R. Co. v. Henry*, 22 B. 242, as to liability for injury of employe.

It is duty of railway company to afford reasonable protection to its employes against dangers incident to their work, and if under given circumstances a rule providing for warning was necessary and that necessity could by exercise of reasonable care have been foreseen, it was the duty of the company to prescribe such rule. *Ry. Co. v. Murphy, Adm'r*, 50 Ohio St. 135.

Railroad company cannot stipulate with employes that it shall not be liable for injuries caused by carelessness of superiors; such stipulation is contrary to public policy. *Ry. Co. v. Spangler*, 44 Ohio St. 471.

If an employe of a railroad company who is injured in the line of his duty by the negligence of his superior, and is a member of a relief association, signs a release of the railroad company as a condition of receiving relief from the relief association, he is bound by such election. *Balto. & Ohio R. R. Co. v. Bryant*, 9 C. C. 332; *P. C. C. & St. L. Ry. Co. v. Cox*, 55 Ohio St. 497.

Widow of deceased member is not estopped from suing as administratrix for death by negligence, by accepting the relief provided by the relief association. *B. & O. R. R. Co. v. McCarney*, 12 C. C. 543.

That a conductor after his work was done was going home by a train on a free pass, does not avoid liability of the company for injury through negligence. *L. S. & M. S. Ry. Co. v. Bycraft*, 33 B. 160.

Where a passenger is injured while riding in a car, by a collision with some object outside of the car on the track or right of way, and it does not appear what such object was, a presumption arises that the company was negligent in its duty as common carrier, which must be explained away or accounted for to relieve the company from liability. *Cin. H. & D. R. R. Co. v. Brown*, 9 C. C. 198; affirmed in 36 B. 287.

As to liability of railroad company to one who was acting as baggage-master and express messenger, and injured through the negligence of the employes of the railroad company, see *Railroad Co. v. McCarney*, 12 C. C. 543.

That either or both companies controlling connecting lines may be liable for injury to employe of one by reason of defective cars, see *R. R. Co. v. Snyder*, 55 Ohio St. 342.

Conductor is the representative of company in management of train and binds it by negligence by failing to tell engineer facts calling for different kind of care. *L. S. & M. S. Ry. Co. v. Hunter*, 13 C. C. 441.

Yardmaster having assigned a sufficient number of brakemen to attend to

freight cars being moved about the yard, the company is not liable to other employes run over by freight cars moving on track without a brakeman attending them. *The Penna. Co. v. Fax*, 10 C. C. 72.

Where railroad company has long permitted public to pass over its road, it must exercise care in operating its trains, proportioned to probable danger to such public, and where its servants have wantonly left an explosive torpedo on the track at such a place, by which a child nine years old was injured; held, negligence which was proximate cause of injury. *Harriman v. Ry. Co.*, 45 Ohio St. 11.

Where employe of railroad company is injured by his violation of regulations of which he had knowledge, he cannot recover from the company, nor raise the question of reasonableness of regulations. *Wolsey v. Ry. Co.*, 33 Ohio St. 227; *Johnson v. Ry. Co.*, 11 C. C. 553.

But the sufficiency of such regulations is to be left to the jury; *Ry. Co. v. Eis, Adm'r*, 2 Cir. Ct. Rep. 3; but employe may be estopped by acquiescence. *Id.*; and *Railroad Co. v. Knittal*, 33 Ohio St. 468.

For injury to a servant in Pennsylvania, under contract made there, by which all services were to be rendered there, no recovery can be had, if, by the laws of Pennsylvania, no cause of action arose there, although the laws of Ohio would give full relief had the transaction occurred in Ohio. *Alexander v. Penna. Co.*, 48 Ohio St. 623.

§ 3335. Penalties for violation of section thirty-three hundred and thirty-three—

Every engineer or person in charge of an engine who willfully fails to comply with the provisions of section *thirty-three hundred and thirty-three*, or fails to bring the engine of which he is in charge, with the train, if any, thereto attached, to a full stop at least two hundred feet before arriving at any railroad crossing or connection, or crosses the same before signaled so to do by the watchman, or before the way is clear, shall be personally liable to any person injured by reason of such failure to a penalty of one hundred dollars, to be recovered by civil action, at the suit of the state, in the court of common pleas of any county wherein such crossing or connection is; and the company in whose employ such engineer or person in charge of an engine is, as well as the person himself, shall be liable in damages to any person or company injured in person or property by such neglect or act of such engineer or person. 71 v. 50, § 3.

§ 3336. Signals at railroad crossings—

Every company shall have attached to each locomotive engine passing upon its road, a bell of the ordinary size in use on such engine, and a steam whistle, and the engineer or person in charge

of an engine in motion and approaching a turnpike, highway toward [town road] crossing or private crossing where the view of said private crossing is obstructed by embankment, trees, curve or any other obstruction to view, upon the same line therewith, and in like manner where the road crosses any other traveled place, by bridge or otherwise, shall sound such whistle at a distance of at least eighty and not further than one hundred rods from the place of such crossing, and ring such bell continuously until the engine passes such crossing; but the provisions of this section shall not interfere with the proper observance of any ordinance passed by any city or village council regulating the management of railroads, locomotives and steam whistles thereon, within the limits of such city or village. 89 O. L. 331.

Municipal corporations have no power, by ordinance, to compel railroad companies to maintain watchmen at street crossings. *Ravenna v. Penna. Co.*, 45 Ohio St. 118.

Where track crosses street and by use for switch becomes exceptionally dangerous at such crossing, the railroad company should maintain flagmen, or gates and gatemen, and a company using such track, under agreement to pay a specified sum, is under the same obligation; and when such gates are open and the gateman in charge, it is not negligence in persons approaching the crossing to drive across the tracks without stopping to listen, or looking. *Ry. Co. v. Schneider*, 45 Ohio St. 678.

There is no rule of law requiring a railroad company to erect gates, or keep a flagman at the crossing of a highway by its tracks outside of a city or village. *L. S. & M. S. Ry. Co. v. Gaffney*, 9 C. C. 32; but circumstances may require it. *C. C. & I. Ry. Co. v. Reiss*, 13 C. C. 405.

A traveler crossing a steam or street railroad, must use his senses, look and listen for approaching trains; but it is not always negligence, *per se*, to fail to do so. *Weiser v. Broadway & Newburg St. Ry. Co.*, 1 O. C. C. 14, affirmed in 37 B. 212.

It is the duty of a person driving along a public highway, on coming to a known railroad crossing, at grade where trains are to his knowledge about to pass, to stop, look and listen, although flagman usually at the crossing was not there, and neither of the signals required by statute was given. *L. S. & M. S. Ry. Co. v. Geiger*, 8 C. C. 41; *L. S. & M. S. Ry. Co. v. Gaffney*, 9 C. C. 32.

§ 3337. Penalties for violation of preceding section—

Every engineer or person in charge of any such engine who fails to comply with the provisions of the preceding section shall be personally liable to a penalty of not less than fifty nor more than one hundred dollars, to be recovered by civil action, at the suit of the state, in the court of common pleas of any county

wherein such crossing is, and the company in whose employ such engineer or person in charge of an engine is, as well as the person himself, shall be liable in damages to any person or company injured in person or property by such neglect or act of such engineer or person. 69 v. 49, § 2.

(§ 3337-1.) Sec. 1. Bridges over railroad crossings—

It shall be unlawful for any person, company, or corporation owning or operating any railroad crossing, or that may hereafter cross, over and above any street, less than seventy feet in width, in any city in this state, at an elevation above such street sufficient to permit persons to pass and repass along such street beneath such railroad crossing, to place or cause to be placed, or to suffer or permit to be or remain in such street, beneath such railroad crossing or bridge, any pier or other stay or support for such crossing or bridge, or to suffer or permit any such railroad crossing or bridge to be or remain in such condition that any iron, coal, or other hard substance, or any fluid or noisome matter, may fall or drop from or through any such crossing or bridge, upon persons traveling or passing beneath the same; any such person, company, or corporation owning or operating any such railroad, failing to comply with the requirements of, or violating any of the provisions of this section, shall, for each and every day during the continuance of such failure or violation, and on account thereof, forfeit and pay to such city the sum of one hundred dollars, which may be recovered in a civil action, in the name of such city, against the owner or operator of such railroad, or both, as the city may elect, and thereafter like recovery may be had, in like manner, for subsequent failures and violations aforesaid. 86 O. L. 197.

(§ 3337-2.) Sec. 2. Council may prohibit switching, obstructing, etc.—

That the city council of any city may prohibit the switching of freight engines, trains, or cars, over or on said crossing or bridge, the sounding of locomotive steam whistles on or near the same, and the standing or stopping of any railroad engine over or on the same and may, by ordinance, constitute the same an offense, and provide for the punishment of any person committing such offense. 86 O. L. 197.

(§ 3337-3.) Sec. 1. Railroad companies must build and maintain highway crossings, sidewalks, etc.—

All railway or railroad companies operating a line or lines of railway in this state, shall build or cause to be built, and keep in repair good and sufficient crossings over, or approaches to such line or lines of railway, its tracks, side-tracks and switches, at all points where any public highway, street, lane, avenue, alley, road or pike is now or may hereafter be intersected by such lines of railway, its tracks, side-tracks, or switches. And also good and sufficient sidewalks on both sides of streets intersected by their roads, the full width of the right of way owned, claimed, or occupied by them ; and as to crossings and approaches outside of municipal corporations, the township trustees shall have power to fix and determine the kind and extent thereof, and the time and manner of constructing the same ; and as to crossings, approaches, and sidewalks within municipal corporations, the municipal councils shall have and exercise the same powers as trustees concerning crossways and approaches outside of municipalities, and such crossways, approaches and sidewalks shall be constructed, repaired and maintained by the railroad companies as so ordered.

(§ 3337-4.) Sec. 2. Service of notice on railroad company—

It shall be the duty of the officer or officers having charge of any public highway, street, or alley intersected by any line of railway, to serve a written notice upon the nearest station agent or section foreman having charge of that portion of the railway where such intersection occurs, that such crossing, approach or sidewalk as herein described shall be built or repaired, setting forth the kind and extent thereof, and time and manner of constructing the same, as ordered by the council or trustees.

(§ 3337-5.) Sec. 3. When crossings, sidewalks, etc., must be completed, etc.—

It shall be the duty of any railway company so notified to comply with said notice within a period of thirty (30) days from and after receiving such notice, and on failure so to do, the township trustees, or council, as the case may be, may cause such crossing, approach or sidewalk to be constructed or repaired as before ordered, and may recover the cost of so doing, with interest

thereon, in a civil action against the railroad company, in the name of the trustees or municipality, as the case may be, before any court of competent jurisdiction.

(§ 3337-6.) Sec. 4. Crossings must be kept clear of snow—

It shall be the duty of all railway companies owning or operating any line of railway within the limits of the State of Ohio to, at all times, keep all public highways now or hereafter crossing such line of railroad clear of snow, so that the same shall at all times be in a safe and convenient condition for travel for a distance of fifty (50) feet each way from the center of said railroad along such highway.

(§ 3337-7.) Sec. 5. Penalties—

Any railroad company which shall neglect to comply with the terms of this act shall be liable to pay damage to the city, village, town or township, in which the highway is situated in the sum of thirty (\$30) dollars for such neglect, and a further sum of ten (\$10) dollars per day for each and every day such railroad company fails or neglects to comply with the terms of this act, the same to be recovered in an action brought in the name of the city, village, town, or township, as the case may be. It is hereby made the duty of the prosecuting attorney of the county to prosecute to judgment any claim arising under the foregoing provisions, without any charge to the said city, village, town, or township. 88 O. L. 261.

(§ 3337-8.) Sec. 1. Manner of altering or abolishing grade or other crossings—

If the council or board of legislation of any municipal corporation in which any railroad or railroads, and a street or other public highway cross each other at grade [or] otherwise, or the commissioners of any county in which, outside of any municipal corporation, a railroad or railroads and any public road or highway cross each other at grade, and the directors of the railroad company or companies are of the opinion that the security and convenience of the public require that alterations shall be made in such crossing, or in the approaches thereto, or in the location of the railroad or railroads or the public way, or any grades thereof, so as to avoid a crossing at grade, or that such crossing should be discontinued with or without building a new way in

substitution therefor, and if they agree as to the alterations which should be made, such alterations may be made in the following manner:

(§ 3337-9.) Sec. 2. Resolution pertaining to same; publication; notice to property owners; claims for damages—

When it is deemed necessary by any municipality or by any county to join with any railroad company or companies in the alteration or abolition of any grade or other crossing, the council or board of legislation of the municipality, by a two-thirds vote of all the members elected thereto, or the commissioners of the county, by a unanimous vote of all the members thereof, shall, by resolution, declare such necessity and intent, and shall state in such resolution the manner in which the alterations in the crossings are to be made, giving the method of constructing the new crossing with the grades for the railroad or railroads and the public way or ways; also what land or other property it is necessary to appropriate, and how the cost thereof shall be apportioned between the municipality or county and the railroad company or companies; also by whom the work of construction is to be done and how the cost thereof shall be apportioned between the municipality or county and the railroad company or companies. Such resolution shall be published and notice of its passage given to owners of property abutting on the proposed improvement in the manner provided in section *twenty-three hundred and four* of the Revised Statutes, and all claims for damages by reason of such improvement, must be filed in the manner and within the time provided by section *twenty-three hundred and fifteen* of the Revised Statutes.

(§ 3337-10.) Sec. 3. Determination as to proceeding with proposed improvement; ordinance or resolution upon decision to proceed; agreement between municipality or county and railroad company—

In not less than thirty nor more than ninety days after the passage of the resolution provided for in section two hereof, the council, board of legislation or commissioners shall determine whether it or they will proceed with the proposed improvement or not; if it is decided to proceed therewith, an

ordinance by the council or resolution by the commissioners shall be passed, which ordinance or resolution shall contain, in addition to the terms and conditions stated in the resolution under section two hereof, the plans and specifications of the proposed alteration and improvement, also a statement of the damages claimed or likely to accrue by reason thereof, and how the payment thereof shall be apportioned between the municipality or county and the railroad company or companies; also who shall supervise the work of construction. Upon the acceptance of this resolution or ordinance by resolution by the railroad company or companies through the directors thereof, the same shall constitute an agreement which shall be valid and binding on the municipality or county and the railroad company or companies respectively; provided, however, that such agreement shall be thereupon filed in the court of common pleas of the county in which the crossing is located, for entry upon the records thereof; whereupon it shall have the same force and effect as a decree of the court.

(§ 3337-11.) Sec. 4. Purchase or appropriation of necessary land or property—

The land or property required to make the alteration in the street or highway necessitated by the proposed improvement, shall be purchased or appropriated by the municipality or county after the manner provided by law for the appropriation of private property for public use, and the land or property required to make the alteration in the railroad or railroads necessitated by the proposed improvement, shall be purchased or appropriated by the railroad company or companies after the manner provided for the appropriation of private property by such corporation.

(§ 3337-12.) Sec. 5. Apportionment of cost—

The cost of the construction of the improvement in the crossing, including the cost of land or property purchased or appropriated, and the payment of damages to abutting property shall be apportioned as follows: The railroad company or companies (if several railroads cross a public way at or near the same point) shall pay not less than sixty-five per centum of such cost, and the municipality or county shall pay not more than thirty-five per centum of such cost. Within these limits the apportionment may be fixed by the agreement under section three hereof.

(§ 3337-13.) Sec. 6. Repairs.

After the completion of the work, the crossing and its approaches shall be kept in repair as follows: When the public way crosses the railroad by an overhead bridge, the frame work of the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the surface of the bridge and its approaches shall be maintained and kept in repair by the municipality or county in which the same are situated. When the public way passes under the railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the public way and its approaches shall be maintained and kept in repair by the municipality or county in which they are situated.

(§ 3337-14.) Sec. 7. Bonds and tax—

For the purpose of raising the money to pay the proportion of the cost of such improvement, payable by the municipality or the county, the bonds of the municipality or the county may be issued to the necessary amount, which bonds shall be of such denomination and payable at such place and times as the council or board of legislation, or the commissioners may determine, and shall bear interest not exceeding five per cent per annum, and shall not be sold for less than their par value. A tax on the taxable property of the municipality or county not exceeding one-half mill in each year may be levied to pay the principal and interest of the bonds as the same may mature. After the completion of the improvement, a tax may be levied by the municipality or county to pay the cost of maintaining and keeping in repair that part of the work required to be maintained or kept in repair by it.

(§ 3337-15.) Sec. 8. Assessment and determination of claims for damages—

All claims for damages, by reason of such improvement, filed in accordance with the provisions of section two hereof, shall be assessed and determined in accordance with the provisions of sections *twenty-three hundred and sixteen to twenty-three hundred and twenty-six*, inclusive, of the Revised Statutes, and either before commencing or after the completion of the proposed improvement, as the council or board of legislation or commis-

sioners may decide at the time it is determined to proceed with the proposed improvement.

(§ 3337-16.) Sec. 9. Failure of railroad company to comply with provisions of agreement—

In case the railroad company fails to comply with any provisions of any agreement entered of record in a court of common pleas, under this act, such court, upon the application of a city solicitor or prosecuting attorney, stating the nature of such non-compliance, may make such orders and decrees as it may deem proper and just to enforce the terms of the agreement and the requirements of this act on the part of the railroad company, and to secure its compliance therewith, and for such purpose, may, if it deem the same necessary, restrain and enjoin the railroad company from the use of its track and the operation of its railroad on and over the crossing in question, until it shall have complied with the order and decree of the court; provided, that nothing in this act shall be construed to exempt railroad companies from any obligations or liabilities under existing statutes.

(§ 3337-17.) Sec. 10. Grade crossing on county line road—

When any grade crossing is on a county line road, the commissioners of each county in which such crossing is situated may join in all the proceedings necessary for the abolition of such grade crossing as provided in this act, and that part of the cost of making such change in the crossing and of keeping the same in repair which is not agreed to be paid by the railroad company or companies, shall be paid by the counties in equal proportions, and the money for such purpose shall be raised in accordance with section seven of this act. 90 O. L. 359.

(§ 3337-18.) Sec. 11. Required height of bridges, etc., over railroad tracks—Cost—

All bridges, viaducts, overhead roadways or foot-bridges, wire or other structure, hereafter constructed over the track or tracks of any railroad or railroads within the State of Ohio, by any county, municipality, township, railroad company, or other private corporation or person, shall be of such height as to be not less than twenty-one feet in the clear from the top of the rails of said track or tracks, to said wire and other structure or to the bottom of the lowest sill, girder or cross-beam, and the

lowest downward projection on such bridge, viaduct, overhead roadway or foot-bridge, except in cases where the commissioner of railroads and telegraphs shall find such construction is impracticable, and in every such case said commissioner shall file a written statement in his office setting forth the facts relied upon by him in making such finding. But this provision shall not apply to any main track. Provided, that where any bridge, viaduct, overhead roadway or foot-bridge over a railroad track or tracks is rebuilt, it shall be brought under the provisions of this act, and in such case, if said structure is at, or in line of, a public street or highway, and is thus erected over the grade of any such street or highway and any cross-street or streets, the cost of making such street or streets or highway or highways conform to such new grade, and all damages to owners of property abutting on such street or streets, highway or highways, because of such change of grade, shall be ascertained and determined, and paid as follows: Said or any railroad company or its assigns shall pay all costs or damages resulting as aforesaid, from the raising or building of any of its bridges or structures, as aforesaid, in the line of any street or highway at a greater height than before the passage hereof; and if such company is only part owner of any such structure, it shall pay its proportionate share of the cost of such change of grade and damages. Should a railroad company, or its assigns, raise the grade of its track or tracks under any of said structures not owned by it after the passage of this act, thereby causing any said bridge or structure to be put at a higher grade when rebuilt, said company shall pay all costs and damages as aforesaid made necessary thereby. 94 O. L. 297.

(§ 3337-19.) Sec. 2. Enforcement of act—Filing of plans and specifications and granting of permit—Penalty—Injunction—

It is hereby made the duty of the commissioner of railroads [and] telegraphs to see that the provisions of this act are carried into effect; and every railroad company in the State of Ohio, public or private corporation, or person building, or permitting to be built, any bridge, viaduct, overhead roadway or foot-bridge, or wire and other structure, as specified in section one of this act, shall file with the said commissioner plans and specifications, and first receive from him a permit before being allowed to proceed with said structure and the erection of

said wire. Any person, corporation, public or private, violating the provisions of this act, upon conviction before a court of competent jurisdiction, shall be fined any sum not less than one hundred nor more than one thousand dollars; and every day that said structure or wire, not in conformity to the provisions of this act, is permitted to remain, shall constitute a separate offense. The observance of the provisions of this act may be enforced by injunction on complaint of any person, corporation or board interested therein. 91 O. L. 365.

§ 3338. Whole track to be of uniform gauge—

Every company shall make every railroad constructed or controlled by it of one uniform gauge or width of track from end to end, when any road connects with or crosses any other road, the companies owning or controlling such roads may adopt such uniform gauge or width of track as will enable each company to pass its cars over the road of the other, and in case roads so connecting or crossing are constructed of different gauges or widths of track, the companies controlling the same may lay down and maintain, upon the whole or any portion of such road or roads, an additional rail or rails, so as to admit the passage of the same cars over both roads, and may also maintain and operate either or both of such roads, upon the track or tracks originally constructed, as may be deemed expedient by the company or companies owning or controlling either or both of the roads. 63 v. 88, § 1; S. & S. 115.

§ 3339. When tracks must be used in common—

When two or more companies have, in the same street, alley, public way, or opening, two or more tracks of the same gauge, through a city or village, the council of such city or village may require such companies to use such tracks in common, and to pass their locomotives and cars over each track in one direction only. 54 v. 133, § 4; S. & C. 325.

§ 3340. When connections may be made—

When the track of a company crosses the track of the same gauge of another company, either company may connect the tracks of the two roads so crossing, connecting or intersecting so as to admit the passage of cars from one road to another with facility, and avoid the necessity of transferring freights from said cars.

And when the tracks of one company lie contiguous to coal mines, stone quarries, manufacturing establishments, elevators, warehouses, navigable waters or side tracks, suitable for loading or unloading, it shall be the duty of such company to switch the cars of other companies, at the request of such companies, or the shippers, over and upon the tracks so lying besides such coal mines, stone quarries, manufacturing establishments, elevators, warehouses, navigable waters or side tracks, for the purpose of unloading or loading grain or other freight into or from such elevators, warehouses, boats upon said navigable waters, or side tracks, without demurrage for forty-eight hours. 88 O. L. 45.

§ 3341. When companies must transport cars of other companies—Rates for switching cars of other companies, etc.

When the tracks of two companies are connected as aforesaid, either company shall, when required, transport over its road to its destination thereon, any freight offered, in the cars in which it is offered, at its local rates per mile as set forth in the company's freight tariff for the distance most nearly corresponding, and [to] return the cars, with or without freight, without unnecessary delay; and any company owning a track or tracks lying contiguous to coal mines, stone quarries, manufacturing establishments, elevators, warehouses, navigable waters or side tracks as aforesaid, and within the proper terminal limits of or about any city or village, shall be entitled to receive from the company whose cars are so switched, loaded and unloaded at such coal mines, stone quarries, manufacturing establishments, elevators, warehouses, navigable waters or side tracks, no more than one dollar per car for switching one-half mile or less on such tracks; for all distances over one-half mile, and not exceeding two and one-half miles, such charge shall not exceed one dollar and fifty cents per car; and for all distances over two and one-half miles, and not exceeding five miles, the charge shall not be more than two dollars per car; and for all distances of more than five miles the charge shall not be more than three dollars per car; and when such service is on the roads of two or more companies, then the aforesaid charge shall be divided between said companies in proportion to the distances of each road; provided, however, that each company shall be entitled to at least one dollar for such service, regardless of distance, and there shall,

be no charge for returning empty cars from said coal mines, stone quarries, manufacturing establishments, elevators, warehouses, navigable waters, or side tracks; and any such company shall be entitled to perform the service or do the switching work, herein provided for, in the daytime; and whatever private side-tracks are now, or may hereafter be constructed, it shall be the duty of the company to switch cars thereon at the rates herein specified; and the distance provided for in this section shall be computed from the general freight warehouses in such city or village, and from the siding used for the storage of cars nearest to where they may be required, outside municipalities; provided, further, that nothing herein contained shall require any railway or railroad company now in operation to furnish its terminals and facilities at the rates herein named, to any similar company for any railroad to be built by it hereafter which shall not afford similar terminals and reciprocal facilities. 89 O. L. 369.

§ 3342. Ways for water must be provided—

There shall be constructed and kept open, along the road-bed of every railroad, except where the road extends through or by swamp land, by the company or person operating the road, ditches or drains of sufficient depth, width and grade to conduct to some proper outlet the water which accumulates along the sides of such road-bed from the construction or operation of such road. 66 v. 335, § 1.

§ 3343. Proceedings to enforce preceding section—

If, after ten days' notice or request to any ticket or other agent of the company or person operating a railroad to provide such drain or ditch, preferred by the person authorized to institute the proceedings hereinafter provided for, the provisions of the foregoing section be not complied with, any owner or tenant of land contiguous to such railroad, feeling aggrieved by such neglect, may give notice of the fact, in writing, to the probate judge of the county in which such neglect occurs, designating in such notice the place or places on such road where such drains or ditches have not been made; and upon the receipt of such notice the probate judge shall appoint a commission, of three disinterested freeholders of such county, who, together with the county surveyor, shall proceed to the place designated in the

notice, and if, upon inspection, it is found that the provisions of the preceding section are not complied with, the commission, or a majority thereof, shall report the same to such probate judge, who shall keep a record of such proceedings; and the probate judge shall designate a time within which such ditches or drains shall be made or opened, and shall forthwith notify the company or person operating such road, in writing, whose duty it shall be to make or open such ditches or drains within the time specified. 66 v. 335, § 2.

§ 3344. When the probate judge may let the work—

If such company or person neglect to comply with the notification of the probate judge, he shall forthwith, by advertisement for three consecutive weeks, in one or more of the weekly newspapers published in such county, give notice that the work of making or opening the ditches or drains will be let to the lowest bidder, at such time and place as shall be designated in the advertisement. 66 v. 335, § 3.

§ 3345. Sale of the work, and proceedings thereon—

The probate judge shall, at the time and place specified in the advertisement, sell the job or jobs of making or opening such ditches or drains to the lowest bidder, and take from such bidder a sufficient bond, with surety, for the performance thereof, and upon the completion thereof to the satisfaction of the probate judge he shall give the bidder a certificate therefor, stating the amount due for the work; and upon presentation of the certificate to the auditor of the county, he shall place the amount so certified forthwith upon the tax duplicate of the county, against the company, together with all the costs and expenses for inspection by the commission and surveyor, notices, advertisements, sale of work, making contract therefor, approval of the work, and other costs, and interest on the amount certified to be due for the work from the time the work is approved until the amount can be collected by the treasurer of the county; and such tax shall be collected as other taxes, and be paid to the persons entitled thereto on the warrant of the county auditor on the county treasurer. 66 v. 335, § 4.

§ 3346. Fees of officers in such cases—

The probate judge, commissioners, and surveyor shall be en-

titled to receive for their services such costs, fees, and expenses as are provided by law for costs, fees, and expenses of county commissioners and others under proceedings relating to ditches. 66 v. 335, § 5.

§ 3347. Movable bridge between passenger cars required—

Every company conveying passengers shall provide the passenger cars in its trains with a flexible or movable bridge or apron, of the full width of the opening between the railings attached to the platforms of such cars, with side-boards or net-work of strap iron or large wire, or other suitable material, at each side of the bridge or apron, of at least equal height with the ordinary railings upon the platforms, or some other apparatus or arrangement equally sufficient to enable passengers to pass from car to car with safety. 68 v. 35, § 1.

§ 3348. Penalties for violation of preceding section—

A company which fails to comply with the provisions of the preceding section shall be subject to a penalty of one hundred dollars for each and every day of such failure, to be recovered in a civil action, in the name of the state, and paid into the state treasury. 68 v. 35, § 2.

§ 3349. When two preceding sections do not apply—

Nothing contained in the two preceding sections shall require any company to provide an apron or bridge between the platform of a freight car and the platform of the passenger car attached to a freight train. 68 v. 35, § 3.

§ 3350. Commissioner of railroads must enforce certain sections—

The commissioner of railroads and telegraphs shall see that the provisions of sections *thirty-three hundred and forty-seven* and *thirty-three hundred and forty-eight* are enforced. 68 v. 35, § 4.

§ 3351. Prescribing heating apparatus for railroad cars—

Each railroad company in this state shall, when necessary to heat any of its cars for carrying passengers, mail, baggage, or other express matter, do so by a stove or heater so constructed and protected as to most effectually guard the passengers against the danger by fire, in case of accident by collision, or the cars being

overturned or thrown from the track; and it shall be unlawful for any such company to permit any other person or corporation to use cars carrying passengers, mail, baggage, or express matter over its road unless the heating apparatus thereof shall conform to the requirements of this section. 77 O. L. 202.

§ 3352.

[Repealed. 77 O. L. 202.]

§ 3353. How passenger cars to be lighted—

No passenger cars on any railroad shall be lighted by naphtha, or any illuminating oil fluid made in part from naphtha, or wholly or in part from coal or petroleum, or other substance or material which will ignite at a temperature of less than three hundred degrees Fahrenheit; and the commissioner of railroads and telegraphs, by himself or agent, may, at any time, enter the cars running on any railroad, and take from any lamp therein samples of the oil found there, for the purpose of testing the same, and if it prove of a lower grade than is required by the provisions of this section, he shall bring suit for the penalty provided in section *thirty-three hundred and fifty-four*. 74 v. 207, § 2.

A bridge or part of a railway within a municipal corporation may be required by the council to be lighted, under sec. 2494. That section is constitutional, *R. R. Co. v. Sullivan*, 32 Ohio St. 152; and applies although the company operating the railroad is neither owner nor lessee. *R. R. Co. v. Bowling Green*, 57 Ohio St. 336.

* As to reasonableness of ordinance requiring lighting, etc., *Village of St. Mary's v. R. R. Co.*, 60 Ohio St. 136, reversing 14 C. C. 202. See, also, *Ry. Co. v. St. Bernard*, 15 C. C. 588, reversing 7 N. P. 183; 19 C. C. 299.

§ 3354. Penalty for violating certain sections—

Any railroad company refusing or neglecting to comply with the provisions of section *thirty-three hundred and fifty-one*, shall be liable to a penalty of not less than one hundred nor over five hundred dollars, to be recovered in a civil action in any court of record in any county through which such road shall pass, in the name of the State of Ohio, for the benefit of the common schools of the state, to be prosecuted by the prosecuting attorney of the proper county, at the instance of the prosecuting attorney, or at the instance of the railroad commissioner, as provided by law (§ 263, R. S.) in other cases for the recovery of penalties and forfeitures against railroad companies, after due notice given by

such railroad commissioner to the president or managing officer of such delinquent railroad company, and its neglect thereafter for a period of thirty days to comply with the provisions of said section; the prosecuting attorney to receive twenty-five (25) per cent of all fines and costs collected under the provisions of this act. 77 O. L. 202.

(§ 3354-1.) Sec. 1. Regulating distance from station platform to top of lowest step on passenger cars—Penalty—Suit—Penalty in case of personal injury—

It shall be the duty of all railroad companies, and of all persons operating a railroad in this state, on and after October 1st, after the passage of this act, to so regulate the rise from the station floor or platform to the top of the lowest step on passenger cars that it shall not be necessary to rise more than twelve inches in one step. Where the rise in one step now exceeds twelve inches, the relation between said car step and the station platform or floor must be changed not to exceed twelve inches or safe portable or stationary steps provided that will make said rise within the required limit. Any railroad failing to comply with the provisions of this act shall pay a penalty of not less than \$50 nor more than \$500 for each and every violation; and it is hereby made the duty of the prosecuting attorney of the county in which the violation occurs, to immediately commence suit against the railroad violating the same, upon the written complaint of any citizen; and in case personal injury results from the violation of this act, in addition to the liability for damages, the party in charge of the operation and management of the road shall be deemed to be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than five hundred dollars. 89 O. L. 347.

§ 3354-2. Sec. 1. Equipment of passenger trains with fire extinguishers—Limit as to cost—

Every person, company or corporation, operating a railroad, or railroads, in whole or in part in this state, shall be required, within one year from the passage of this act, to carry, on every passenger train operated within and throughout this state, as a part of the equipment of said train, at least one portable chemical fire extinguisher for the purpose of protecting the lives of its passengers and employes from fire, and that one portable chemi-

cal fire extinguisher shall be added each year thereafter to every train operated until every passenger coach comprising the train of passenger cars run on any of the railroads of this state shall be supplied with a portable chemical fire extinguisher as a part of the equipment of said cars; provided that said extinguishers can be procured at a cost not exceeding fifteen dollars each. 92 O. L. 396.

(§ 3354-3.) Sec. 2. Size, durability, construction, resistance, and approval of extinguishers—

That the said fire extinguishers shall be of sufficient size, durability, mechanical construction and able to withstand such pressure as will make it an efficient fire extinguisher, provided that such extinguisher shall first be approved by the commissioner of railroads and telegraphs, and such different makes of extinguishers as shall come within the requirements of this act, shall be approved by him, and his discretion relative to the approval thereof shall be exercised in such a way as to invite and encourage the most extended competition. 92 O. L. 396.

(§ 3354-4.) Sec. 3. Designation of cars on which extinguishers to be placed, and place and manner of attachment—Enforcement of provisions—Penalty for violation—

It shall be the duty of the commissioner of railroads and telegraphs of this state to designate on which car of every passenger train the first and every subsequent extinguisher shall be placed, until each coach of every train shall be fully supplied according to the provisions of this act. It shall be the duty of said commissioner of railroads and telegraphs to determine where in such coach said extinguisher shall be placed and how attached, but in all cases it shall be so attached as to be easy of access in case of emergency or necessity. It is hereby made the duty of said commissioner of railroads and telegraphs to see that the provisions of this act are carried into effect. Any person, company or corporation mentioned in section one of this act violating any of the provisions of this act, upon conviction in any court of competent jurisdiction, shall be fined not less than twenty-five dollars nor more than one hundred dollars, and every day that said above-named persons, company or corporation run

their trains in violation of the provisions of this act shall be construed to constitute a separate offense. 92 O. L. 396.

(§ 3354-5.) Sec. 1. Steam railroad company to maintain telegraph line—

Every steam railway company operating ten miles or more of its railroad for the carrying or transportation of passengers and freight over its road within this state, shall erect and maintain or cause to be erected and maintained in complete working order, for use and operation along the line of its road used for the carrying and transportation of passengers or freight, a telegraph or telephone wire, with an office and proper means for communication by said wire at each of its principal railway stations. And it shall be unlawful for any steam railway company operating ten miles or more of its railroad aforesaid having no telegraph or telephone wire along the line of its railroad, as provided herein, to ask, demand or receive any compensation whatever for the carrying or transportation of passengers or freight over its said railroad. 93 O. L. 88.

(§ 3354-6.) Sec. 2. Enforcement of preceding section—

The charter of any steam railway or steam railroad company mentioned and provided for in the first section of this act, failing or neglecting to comply with the conditions of this act, shall be declared forfeited and shall be annulled upon or by a civil action brought for that purpose in the name of the State of Ohio by the prosecuting attorney of any county in this state in or through which any steam railroad is operated; and any officer, agent or other person acting for or in behalf of any such steam railway company, who shall order, direct, advise, ask, demand or receive any compensation whatever for the carrying or transportation of passengers or freight over its railroad by any steam railway company mentioned, designated, described or provided for in this act, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail or workhouse not less than thirty days nor more than ninety days, or both. 93 v. 88.

§ 3355. When and how freight-ways may be constructed—

A person owning or operating a coal or iron-ore mine, stone-quarry, rolling-mill, or machine-shop within this state, who, as

a means of removing the product thereof, uses or desires to use a railway, may construct such railway, and run cars thereon, over or under any railroad or public highway, the consent of the owner of the fee in the land at such crossing first having been obtained; but such railway shall be so constructed as in no wise to impede or interfere with the running of cars or the travel upon such railroad or highway, or in any manner to injure or impair such railroad or highway, or any switch, building, or appurtenance connected therewith or belonging thereto; and when such freight-way is constructed over a railroad, it shall be at the height of at least eighteen and one-half feet in the clear above the rails of the same. 70 v. 194, § 1.

§ 3356. When plan of freight-way must be approved by commissioner—

Before any person shall construct such railway across a railroad, he shall submit the plan of construction to the commissioner of railroads and telegraphs for his approval, who shall, at the cost of such person for traveling expenses or otherwise, see that the structure shall, in all respects, conform to the requirements of the preceding section. 70 v. 194, § 2.

§ 3357. How railroad scrap metal shall be sold—

No officer, agent, or employe of a company operating a railroad, except the superintendent, general managing agent, or the receiver of the company, shall sell or dispose of worn or scrap metal, or any iron, brass, or other metal owned by the company, and all sales and barter of such scraps or other metals, owned by a company, made by any other officer, agent, or employe than such superintendent, general managing agent, or receiver, shall be null and void; and no such superintendent, general managing agent, or receiver shall sell or dispose of any such scrap or other metals in quantities less than one ton, nor without delivering to the purchaser a bill of sale thereof, a copy of which shall be retained and filed in the office of such superintendent, managing agent, or receiver. 73 v. 227, § 1.

§ 3358. Penalties for violations of last section—

If a superintendent, general managing agent, or receiver of any company sell or dispose of any railroad scrap metal in quantities less than one ton, or sell or dispose of such metal in any

quantity without delivering a bill of sale thereof to the purchaser, the company which he represents shall not thereafter be entitled to the benefit of the three succeeding sections. 73 v. 227, § 2.

§ 3359. What is the evidence of title to such scrap—

The person, company, or firm to whom is offered for sale, pledge, or trade, any worn or used links, pins, journal-bearings, or other worn or used and detached appendages of railroad equipment, or any scrap metal of iron, brass, or steel appertaining to such equipment, or to a railroad track, shall, before purchasing or dealing in the same, ascertain whether the ownership thereof is lawfully derived, by bill of sale or otherwise, from a company, or from the superintendent, managing agent, or receiver thereof; and in any action in which the right or title to such article of metal is drawn in question, the person, company, or firm dealing therein, or his or its assignee, party to such action, shall be bound to establish and prove, *prima facie*, the title and ownership derived as aforesaid. 73 v. 227, § 3.

§ 3360. When a mixture of such a scrap; deemed a confusion of goods—

If, in such action, it appear, *prima facie*, from the evidence on the trial, that any of the articles or metals in controversy were stolen, or unlawfully obtained, and mixed or confused with other scrap metal, it shall be deemed a confusion of goods, unless the party claiming against the title of the company establish, *prima facie*, a lawful title to the residue from or through a railroad company. 73 v. 227, § 4.

§ 3361. Company may replevy scrap; proceedings in the action—

A company, by its proper officer or agent, or the receiver thereof, may claim to be the general owner of, and may replevy, any of the metals or articles mentioned in section *thirty-three hundred and fifty-nine*, and any metals with which they may have been confused as aforesaid, wherever found in the possession of any person, firm, or company, whenever there is good reason to believe that such metals or articles have been stolen or unlawfully taken from a railroad company or its receiver; and, instead of the usual averment as to ownership, in the affidavit for a writ

of replevin, it shall be sufficient for the officer or agent of such company, or the receiver, to aver that he believes such metals or articles to have been unlawfully taken from such company or some other company; and the person, firm, or company, claiming in such action, or any other action, the right or title to any such metals or articles shall be required to establish and prove, *prima facie*, a right or title thereto, lawfully derived as provided in the preceding sections; in the absence of such proof, the company or receiver claiming such metals or articles shall be held and considered to be the general owner thereof; but any other company or receiver, upon showing that any part of such metals or articles was unlawfully taken from it or him, shall be entitled to such part, upon payment of a proper share of the cost and expenses of the replevy thereof; and if any company, or its receiver, replevy any property under the provisions of this section without good and reasonable cause to believe that the same was unlawfully taken from some company or its receiver, such company or receiver shall be liable to the party entitled thereto, in any sum not exceeding double the amount of the value of the property so replevied, in addition to such damages as such party sustains thereby. 73 v. 227, § 5.

§ 3362. Penalties for obstructing the laying of a track—

No person or corporation shall willfully interfere with or obstruct any company engaged in laying the track of its road across any other railroad, if such company has fully complied with the law, and obtained the right to so lay its track; nor shall any person or corporation obstruct the full operation of any road so constructed; and the person or corporation violating the provisions of this section shall pay, for each day of such interference or obstruction, one thousand dollars, to be recovered by action in the name of the state, one-half of the recovery to go to the company so interfered with, and the other half to the county in which the interference occurs, and shall also be liable for damages to the party injured. 73 v. 160, §§ 1, 2.

§ 3363. When and how a company may dissolve—

Any company which has been in existence for a period of three years, and has not commenced to build the road described in its articles of incorporation, or whose road having been commenced, has been abandoned for three years, may be dissolved by a vote

of two-thirds of its stockholders, at a meeting called for that purpose by its president, notice of which must be published in each county through or into which the line of the proposed road passes at least thirty days before such meeting is held. 69 v. 171, §§ 1, 2.

§ 3364. When companies must cross streams on same bridge—

When it becomes necessary for two or more railroads to cross any of the navigable waters of this state at or near the same point, by draw or swing bridge, the companies or persons owning or controlling such roads shall, if practicable, use one and the same bridge, and approaches thereto ; and the right to use any such bridge and its approaches, or other similar structure, so situate and used as to make it necessary for the companies or persons owning or operating two or more roads to agree upon a common use thereof, in order to comply with the provisions of this section, may, when such companies or persons cannot so agree, be appropriated by the company or persons owning or operating a road for which such use is desired, in accordance with the provisions of law authorizing the appropriation of private property to the use of corporations. 57 v. 10, § 1 ; S. & C. 372b.

§ 3365. Proceedings to appropriate joint use of bridge—

The statement to be filed in such appropriation proceeding shall, as near as may be, set forth the regulations according to which the joint use of such bridge and approaches, or other structure, shall be regulated ; and if the reasonableness of the same, or any part thereof, be denied by the defendant in the proceedings, the court shall hear and determine the issue, and enter on record its finding and order thereon, confirming or altering the regulations, as it may deem just and reasonable, subject to exceptions and reversal for error by the court of common pleas, on petition filed for that purpose ; the order of the court fixing the regulations shall be made before the jury is impaneled to assess the amount of compensation for the right sought to be appropriated ; and such compensation shall be a sum equal to the annual value of such use, to be paid quarterly each year, in advance, while the same continues. 57 v. 10, § 2 ; S. & C. 372c.

(§ 3365-1.) Sec. 1. Requiring railroad companies to place spark arresters on locomotive engines—

Every railroad company operating a railroad or any portion of a railroad, wholly or partly within the State of Ohio, shall place, or cause to be placed, on every locomotive engine used in operating such railroads, or constructing or repairing the same, some device or contrivance that will most effectually guard against the emission of fire and sparks which would otherwise be thrown out by such engines, and such railroad companies shall keep such device or contrivance in good repair; provided that such railroad companies shall not be required to use such device during the months of December, January and February. 82 O. L. 118.

Act construed, and duty of railway company defined. *Lakeside and Marblehead R. R. Co. v. Kelly*, 10 C. C. 322; affirmed in 37 B. 392; *Tol. & Ohio Central Ry. Co. v. Wickenden*, 11 C. C. 378.

(§ 3365-2.) Sec. 2. Penalty for failure to provide same—

Any railroad company or corporation violating the provisions of this act shall, upon conviction thereof in any court of competent jurisdiction, forfeit and pay for each and every such violation any sum not exceeding one hundred dollars; and in addition thereto the court of common pleas, in and for any county through which such railroads are or may hereafter be constructed and operated, may enjoin such railroad companies or corporations from operating on such railroads, any locomotive not provided with the device as required by section one. 82 O. L. 118.

(§ 3365-3.) Sec. 1. Requiring railroad companies to keep right of way free from combustible material—

Every railroad company, or every person in charge of a railroad as manager or receiver, shall be required to keep the right of way of such company clear and free from weeds, high grass, [and] decayed timber, which from their nature and condition are combustible material, liable to take and communicate fire[s] from passing locomotives to abutting or adjacent property. And such company shall be liable for all damage sustained by the owner or occupant of abutting property for any carelessness or neglect to keep such right of way clear of combustible material as herein provided. 87 O. L. 99.

(§ 3365-4.) Sec. 2. When abutting property owner may remove; etc.—

Any person owning or controlling property abutting or adjacent to such railroad right of way, in case of failure to comply with the provisions of this act after twenty days' notice in writing, the default still continuing, may cause to be removed all combustible material from the right of way from [of] such railroad along or by such abutting or adjacent property, and upon presentation of a reasonable account for the same to the agent at the nearest station of such company or receiver, and if such company or receiver refuse to pay the same within thirty days, the amount may be recovered by law, before any court having jurisdiction thereof. 87 O. L. 99.

(§ 3365-5.) Sec. 1. Liability of railroad company for loss or damage by fire—Recovery—Evidence of cause—

Every railroad company operating a railroad or any portion of a railroad wholly or partially within the State of Ohio, shall be liable for all loss or damage by fire originating upon the land belonging to such railroad company caused by operating such railroad. Such railroad company shall be further liable for all loss or damage by fires originating on lands adjacent to such railroad company's land caused in whole or in part by sparks from an engine passing over the line of such railroad, to be recovered before any court of competent jurisdiction within the county in which the lands on which such loss or damage occur are situated, and the existence of such fires upon such railroad company's lands shall be prima facie evidence that such fire was caused by operating such railroad. 91 O. L. 187.

(§ 3365-6.) Sec. 2. Evidence of negligence—

That in all actions against any person or incorporated company for the recovery of damages on account of any injury to any property, whether real or personal, occasioned by fire communicated by any locomotive engine, while upon or passing along any railroad in this state, the fact that such fire was so communicated shall be taken as prima facie evidence to charge with negligence the corporation or person or persons who shall, at the time of such injury by fire, be in the use and occupation of such railroad, either as owners, lessees or mortgagees, and also those who shall

at such time have the care and management of such engine; and it shall not, in any case, be considered as negligence on the part of the owner or occupant of the property injured, that he has used the same in the manner, or permitted the same to be used or remained, had no railroad passed through or near the property so injured, except in cases of injury to personal property, which shall be at the time upon the property occupied by such railroad. 91 O. L. 187.

(§ 3365-7.) Sec. 3. Attorney fee—

In case either party appeal from the judgment of the court in which an action under this act is originally begun, or may carry the case to a higher court on error, the party in whose favor judgment is finally rendered shall have included in his bill of costs against the adverse party, an attorney fee of fifty dollars (\$50) in case the appeal or error is not carried beyond the circuit court, and in case such appeal or error is carried to the supreme court of this state, there shall be an attorney fee of one hundred dollars (\$100) included in his said bill of cost. 91 O. L. 187.

(§ 3365-8.) Sec. 4. Section 3365-6 applies to pending actions—

Section two of this act shall apply to all cases now pending, as well as to those hereafter to be commenced. 91 O. L. 187.

Prima facie evidence defined. Tol. & O. C. Ry. Co. v. Wales, 11 C. C. 371. See, also, Marty v. R. R. Co., 12 C. C. 144; 43 B. 93.

As to constitutionality of sec. 3, see Coal Co. v. Rosser, 53 Ohio St. 12; remainder of act is constitutional, R. R. Co. v. Kreager et al., 43 B. 93, 199, affirming 16 C. C. 125; Marty v. R. R. Co., 12 C. C. 144.

(§ 3365-9.) Sec. 1. Employment of color-blind persons forbidden, etc.—

Said act be so amended as to read as follows: That no railroad company shall hereafter contract to employ any person in a position which requires him to distinguish form or color signals, unless such person within two years next preceding has been examined for color-blindness in the distinct colors in actual use by such railroad company, by some competent person employed and paid by the railroad company, and has received a certificate that he is not disqualified for such position by color-blindness in the colors used by a railroad company. Every railroad company shall require such employe to be re-examined at least once within every two years at the expense of the rail-

road company; provided, that nothing in this section shall prevent any railroad company from continuing in its employment any employe having defective sight, in all cases where such defective sight can be fully remedied by the use of glasses, or by other means, satisfactory to the person making such examinations. 85 O. L. 58, amending 82 O. L. 65.

(§ 3365-10.) Sec. 2. Penalty—

A railroad company shall be liable to a fine of one hundred dollars for each violation of the preceding section. 85 O. L. 58.

(§ 3365-11.) Sec. 1. Requirements as to qualifications of conductors, locomotive engineers and flagmen; responsibility of flagmen; retention of present employes—

That it shall be unlawful for any railroad company or corporation running or operating a steam railroad in the State of Ohio, thirty miles in length or more, and the same having been run and operated for three years or more, to employ any person in the capacity of conductor of passenger train or trains, unless such person has had at least two years' experience in the position of conductor of either passenger, freight or construction train, within six years next preceding the time of such employment. It shall also be unlawful for any such railroad company or corporation to employ any person in the capacity of freight conductor, or conductor of a construction train, unless such person has had at least two years' previous experience as conductor, for a term of two years, or has been employed as a brakeman for at least two years on either passenger, freight or construction trains within five years next preceding the time of such employment. It shall be unlawful for any such railroad company to employ any person in the capacity of locomotive engineer unless such person has had at least three years' experience as locomotive fireman. It shall be unlawful for any such railroad company to employ any person in the capacity of flagman of any train or trains, unless such person shall have had at least two years' experience as a brakeman on passenger, freight, or construction trains, within five years next preceding the time of such employment; and all persons employed in the capacity of flagmen of either freight, passenger or construction trains, shall be held equally responsible with the conductor for any injury re-

sulting from any act of negligence or carelessness of such flagman while in the discharge of his duty. But nothing in this act shall be so construed as to prevent any such railroad company or corporation from retaining conductors, engineers or flagmen in its employ at the time of its passage. 90 O. L. 20.

(§ 3365-12.) Sec. 2. Penalties—

Any railroad company or corporation knowingly violating the provisions of this act shall be fined, for the first offense, not less than five hundred nor more than one thousand dollars, and for any subsequent offense shall be fined not less than one thousand nor more than fifteen hundred dollars, which shall be recovered in a civil action in the name of the state.

(§ 3365-13.) Sec. 3. Duty of railroad commissioner—

It is hereby made the duty of the railroad commissioner of this state to enforce the provisions of this act. 88 O. L. 320.

(§ 3365-14.) Sec. 1. Hours of service of certain railroad employees limited; day's work; extra compensation—

Any company operating a railroad over thirty miles in length, in whole or in part within the state, shall not permit or require any conductor, engineer, fireman, brakeman or any trainman on any train, or any telegraph operator who has worked in his respective capacity for fifteen consecutive hours, to again be required to go on duty or perform any work until he has had at least eight hours' rest, except in cases of detention caused by accident, unavoidable or otherwise. Ten hours shall constitute a day's work, and for every hour that any conductor, engineer, fireman, brakeman or any trainman, or any telegraph operator of any company who works under the direction of a superior, or at the request of the company, shall be paid for such extra services in addition to his per diem. 89 O. L. 311.

So much of this section as relates to ten hours and extra compensation for work in excess of ten hours is unconstitutional. *Wheeling Bridge, etc., Co. v. Gilmore*, 8 C. C. 658

(§ 3365-15.) Sec. 2. Penalty—

Any railroad company or corporation knowingly violating any of the provisions of this act shall be liable to a penalty of not less than five hundred dollars (\$500), nor more than one thousand dollars (\$1,000) for the first offense, and for any subsequent

offense, of not less than one thousand dollars (\$1,000) nor more than fifteen hundred dollars (\$1,500), which shall be recovered in a civil action in the name of the state. 89 O. L. 311.

(§ 3365-16.) Sec. 3. Duty of railroad commissioner—

It is hereby made the duty of the railroad commissioner of this state to enforce the provisions of this act when complaint is properly filed in his office. 89 O. L. 311.

(§ 3365-17.) Sec. 1. Railroad companies shall not employ locomotive engineers addicted to drink; penalty—

It shall be unlawful for any person, company or corporation operating a railroad in whole or in part in this state, knowingly to suffer or permit, either directly, or by, or through, any representative, any person to run or operate in any capacity a railroad locomotive on any part of his, their or its road in this state who is intoxicated, or in the habit of becoming intoxicated, or to knowingly continue the employment of any person in any such capacity, after he becomes or is intoxicated, while in charge of such locomotive, and for every violation of this section, such company, person or corporation operating such road, shall forfeit and pay to the State of Ohio two hundred dollars, to be recovered in the name of the state in a civil action to be prosecuted in any county through which the road runs, by the prosecuting attorney thereof, and he shall be entitled to twenty-five per cent of the recovery, and the balance shall be paid into the county treasury. 88 O. L. 429.

(§ 3365-18.) Sec. 1. Blocking of railway frogs, guard-rails, etc.—

That every railroad corporation operating a railroad or part of a railroad in this state, shall, on or before the first day of June, 1899, adjust, fill or block all angles in frogs, switches and crossings on their roads in all yards, divisional and terminal stations where trains are made up, with the best known sheet steel spring guard or wrought iron appliances approved by the commissioner of railroads and telegraphs. 93 O. L. 342.

(§ 3365-19.) Sec. 2.

Any railroad corporation failing to comply with the provisions

of this act, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars. 85 O. L. 105.

Construed in *Atkyhs v. Wabash R. R. Co.*, 23 B. 151; *R. R. Co. v. Lamb-right*, 5 C. C. 433; affirmed, 29 B. 359; *R. R. Co. v. Winslow*, 10 C. C. 193.

(§ 3365-20.) Sec. 1. For the protection of railroad employees—

For the protection and relief of railroad employees; forbidding certain rules, regulations, contracts and agreements, and declaring them unlawful; declaring it unlawful to use cars or locomotives which are defective, or defective machinery or attachments thereto belonging, and declaring such corporation liable, in certain cases, for injuries received by its servants and employees on account of the carelessness or negligence of a fellow-servant or employee.

It shall be unlawful for any railroad or railway corporation or company owning and operating, or operating, or that may hereafter own or operate a railroad in whole or in part in this state, to adopt or promulgate any rule or regulation for the government of its servants or employees, or make and enter into any contract or agreement with any person engaged in, or about to engage, in its service, in which, or by the terms of which, such employe in any manner, directly or indirectly, promises or agrees to hold such corporation or company harmless, on account of any injury, he may receive by reason of any accident to, breakage, defect, or insufficiency in the cars or machinery and attachments thereto belonging, upon any cars so owned and operated, or being run and operated by such corporation or company being defective, and any such rule, regulation, contract, or agreement shall be of no affect. It shall be unlawful for any corporation to compel or require, directly or indirectly, an employe to join any company association whatsoever, or to withhold any part of an employe's wages or his salary for the payment of dues or assessments in any society or organization whatsoever, or demand or require either as a condition precedent to securing employment or being employed; and said railroad or railway company shall not discharge any employe because he refuses or neglects to become a member of any society or organization. And if any employe is discharged he may, at any time within ten days after receiving a notice of his discharge, demand the reason of said discharge, and said railway or railroad company thereupon shall furnish said reason to said discharged employe in writing. And no railroad company, insurance society or association, or other person

shall demand, accept, require, or enter into any contract, agreement, stipulation with any person about to enter, or in the employ of any railroad company whereby such person stipulates or agrees to surrender or waive any right to damages against any railroad company thereafter arising for personal injury or death, or whereby he agrees to surrender or waive, in case he asserts the same, any other right whatsoever, and all such stipulation and agreement shall be void, and every corporation, association, or person violating or aiding and abetting in the violation of this section shall for each offense forfeit and pay to the person wronged or deprived of his rights hereunder the sum not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), to be recovered in a civil action. 87 O. L. 149.

This section has been held unconstitutional by the U. S. C. C. in *Shaver v. Penna. Co.*, 35 B. 106; 71 Fed. 931; but is assumed to be constitutional, without passing upon it, by the supreme court of Ohio in *Ry. Co. v. Cox*, 55 Ohio St. 497.

A railway corporation is not liable in a civil action to the penalty or forfeiture provided for in above act, for failure to furnish a discharged employe the reason, in writing, for such discharge. *Crall v. Tol. & Ohio Central Ry. Co.*, 7 C. C. 132.

See 34 B. 220, for a Georgia decision holding a similar statute void.

(§ 3365-21.) Sec. 2. Use of defective machinery prima facie evidence of neglect, etc.—

It shall be unlawful for any such corporation to knowingly or negligently use or operate any car or locomotive that is defective, or any car or locomotive upon which the machinery or attachments thereto belonging are in any manner defective. If the employe of any such corporation shall receive any injury by reason of any defect in any car or locomotive, or the machinery or attachments thereto belonging, owned and operated, or being run and operated by such corporation, such corporation shall be deemed to have had knowledge of such defect before and at the time such injury is so sustained, and when the fact of such defect shall be made to appear in the trial of any action in the courts of this state, brought by such employe, or his legal representatives, against any railroad corporation for damages, on account of such injuries so received, the same shall be *prima facie* evidence of negligence on the part of such corporation.

This provision as to the fact of defect being *prima facie* evidence of negligence applies to all railroad companies, any part of whose line of railway

extends into this state, whether the injury complained of was received within or without the state. *The Penna. Co. v. McCann*, 54 Ohio St. 10.

Failure to provide a customary appliance is within this statute. *Crumley v. R. R. Co.*, 12 C. C. 164; affirmed in 37 B. 352.

To overcome the effect of knowledge charged by said section, the company must show that in fact it did not have such knowledge, and used due diligence to ascertain and remedy such defects; the presumption of diligence raised by proof of employment of competent and careful employes is not sufficient. *Railway Co. v. Erick*, 51 Ohio St. 146. See also *R. R. Co. v. Myers*, 12 C. C. 263.

It is not negligence *per se* for a R. R. Co. to use a new coupling device in combination with old devices, although such concurrent use is more hazardous than either would be alone. *R. R. Co. v. Henly*, 48 Ohio St. 608.

Company liable before above law passed, for injury to employe caused by defective machinery. *L. S. & M. S. Ry. Co. v. Raitz*, 10 C. C. 70.

(§ 3365-22.) Sec. 3. Superior officer and fellow-servant defined—

That in all actions against the railroad company for personal injury to, or death resulting from personal injury, of any person, while in the employ of such company, arising from the negligence of such company, or any of its officers or employes, it shall be held in addition to the liability now existing by law, that every person in the employ of such company, actually having power or authority to direct or control any other employe of such company, is not the fellow-servant, but superior of such other employe, also that every person in the employ of such company having charge or control of employes in any separate branch or department, shall be held to be the superior and not fellow-servant of employes in any other branch or department who have no power to direct or control in the branch or department in which they are employed. 87 O. L. 149.

A master mechanic having authority to hire men, has authority to establish the relations between them of superior and subordinate; a "hostler" engineer is not a fellow-servant but a superior of his helper. *B. & O. R. R. Co. v. Sutherland*, 12 C. C. 309; affirmed in 52 Ohio St. 676.

A conductor is not a superior officer to a car repairer. *Johnson v. Ry. Co.*, 11 C. C. 553.

A chief inspector of cars, having other inspectors under him, is not the fellow-servant of a brakeman. *Railway Co. v. Erick*, *supra*.

(§ 3365-23.) Sec. 1. Equipment and operation of railroad cars with automatic couplers and air-brakes—

Every railroad corporation operating a railroad or part of a railroad in this state, shall, on or before the first day of August,

A. D. 1900, equip and furnish all cars, owned and leased, used in its service in this state, with automatic couplers, coupling automatically, and which can be uncoupled without the necessity of men going between the ends of the cars; and shall equip, furnish and operate all cars in its passenger service, and not less than thirty per cent of the cars in its freight service, with air brakes; and no freight train shall, after such date, be run by any such railroad corporation over any part of its road lying within this state unless at least twenty-five per cent of the cars composing such freight train are so equipped, furnished and operated with perfectly acting air-brakes and so as to enable the engineer to control the speed of the train without the use of hand-brakes; provided, that on or before January 1, 1900, twenty-five (25) per cent of all the automatic couplers and air-brakes hereinbefore provided to be put upon cars shall be so furnished on or before January 1, 1900. 94 O. L. 25.

(§ 3365-23a.) Sec. 2. Semi-annual report to be made by railroad companies—

And it shall be the duty of any railroad corporation operating a railroad or part of a railroad within this state, to report to the commissioner of railroads every six months after the passage of this act, and until the first day of August, 1900, the number and class of cars in their service equipped with such automatic couplers and air-brakes, and the number of cars not so equipped; to report upon blanks furnished by such commissioner. 94 O. L. 25.

§§ 3365-24 and 3365-25.

[Repealed. 93 v. 286.]

(§ 3365-26.) Sec. 4. Report as to equipment of cars—

And it shall be the duty of any railroad corporation operating a railroad or part of a railroad in this state, to report to the commissioner of railroads at the earliest practical date after the passage of this act, the number and class of cars in their service equipped with such automatic couplers and air-brakes, and the number of cars not so equipped. 90 O. L. 184.

(§ 3365-27.) Sec. 5. Penalty for non-compliance—

Any railroad corporation which shall fail to comply with any of

the provisions of this act, shall forfeit and pay to the State of Ohio not less than one thousand dollars nor more than five thousand dollars, to be recovered in an action to be brought by the attorney-general in the name of the State of Ohio, and which shall be prosecuted in accordance with the provisions of section *two hundred and ten* of the Revised Statutes. 90 O. L. 184.

**(§ 3365-28.) Sec. 1. Overhead wires—How constructed—
Cross-arms—Height of wires—**

Hereafter all telegraph, telephone, electric light or other wires of any kind constructed over the line of any steam railroad within the State of Ohio shall be put on good substantial poles of a size not less than twelve inches in diameter at the bottom and not less than six inches in diameter at the top, and that they be set in the earth not less than one-sixth of their length and well tamped. Double cross-arms shall be used in all cases and all wires shall be insulated with glass or porcelain insulators, and securely fastened to both cross-arms. All wires to clear the top of the rails at least twenty-five feet, except in cases of trolley wire crossings, when such height, as may be agreed upon, is approved by the commissioner of railroads and telegraphs shall govern. Where there is side strain, poles shall be well guyed or braced.

**(§ 3365-29.) Sec. 2. Duty of commissioner of railroads
and telegraphs—**

It shall be the duty of the commissioner of railroads and telegraphs to see that the provisions of this act are enforced, and he shall have the power to cause the removal of any such telegraph, telephone, electric light, or other wires hereafter constructed over any railroad within the State of Ohio not constructed according to the provisions of this act. 93 v. 154.

FARE AND FREIGHT.

**§ 3366. To or from points competing with the public
works—**

Every company whose line of road extends to any place in the vicinity of, or to a point of intersection with; any of the navigable canals or other works of internal improvement belonging to the state, shall fix and establish a tariff of rates for the transportation of merchandise, produce, and other property consigned

to or from such place or point of intersection, and shall not charge or receive any higher rate for transporting similar merchandise, produce or property, over a shorter distance of its road, than is charged or received according to such fixed tariff for transportation to and from such place of intersection. 50 v. 205, § 1; S. & C. 318.

Contract to repay part of freight paid is illegal. B. & O. R. R. Co. v. Diamond Coal Co., 61 Ohio St. 242.

§ 3367. Tariff of rates to be published, and how changed—

Every such company shall publish its tariff of rates so established, on property consigned to and from such places or points of intersection, and cause the same to be kept conspicuously posted at the several business stations on its road; no such company, its officers or agents, shall charge or receive, directly or indirectly, for transporting any property consigned as aforesaid, any less rate than is designated on such printed card, until such rate is changed by an order of the board of directors of such company, and at least ten days' notice of such change shall be given by bill or card to be posted as aforesaid; and no such company, its officers or agents, shall evade, or attempt to evade, by drawback, free warehousing, or in any other manner, the payment of full freightage, according to the printed tariff of rates, as herein provided. 50 v. 205, § 2; S. & C. 318.

§ 3368. Certain contracts inhibited—

A company whose road forms part of any line of railway between points common to any other line, shall not contract or agree with any person or with any other railroad company or companies, having a road or line of roads, or forming a part of any line of roads, between the same points, not to carry freight or passengers to or from such common points, nor shall it refuse to receive or carry any freight or passengers brought to it to be so carried. 58 v. 74, § 1; S. & S. 117.

See note to sec. 3373.

§ 3369. When trunk roads must not discriminate between other roads—

When any railroad is a trunk road, or in the nature of a trunk road, and at or near the same place connects with or is intersected by two or more other railroads tributary to, or competing

lines for business to or from, such trunk road, or to or from points on or beyond the same, any company or person operating or using such trunk road shall transport passengers and freight going to or coming from such tributary or competing roads without making any discrimination in the charges therefor, directly or indirectly, for or against either of such roads; and the company or person owning or controlling any such trunk road shall not, by lease or otherwise, permit the same to be used or operated in any manner contrary to the foregoing provision. 58 v. 74, § 2; S. & S. 117.

§ 3370. Must forward freight by line named by shipper—

Every company shall ship all freight that comes within its control by the railroads over which it is ordered to be conveyed by the shipper; and any company whose agent knowingly diverts, or permits to be diverted, any freight that comes under his control from the railroad over which the same is ordered to be conveyed, shall forfeit and pay to the company from which such freight is diverted three times the amount received for transporting the same, and such agent shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than thirty days, or both. 58 v. 74, § 3; S. & S. 117.

§ 3371. Preceding section may be enforced by injunction—

On complaint of the violation of any of the provisions of the three preceding sections, by petition as in other actions, the observance of the same may be enforced by injunction, and the party violating the same, or any of them, shall be liable in damages to the person or company injured, or the injury sustained in consequence thereof. 58 v. 74, § 4; S. & S. 117.

§ 3372. Not to discriminate between way and through freight—

Every company whose line of road, or any part thereof, is within this state, shall so employ its rolling stock used for the transportation of freight as to afford as ample facilities for the transportation of local and way freight, delivered to or discharged by it along its line of road, as it affords for the transportation of through freight, in proportion to the amount of its rolling stock, and shall not give

facilities for transportation to either class of freight in preference to the other. 60 v. 93, § 1; S. & S. 116.

§ 3373. Nor against points in the state—

No company or person owning, controlling, or operating a railroad, in whole or in part, within this state, shall charge or receive for transportation of freight for any distance within this state a larger sum than is charged by the same company or person for the transportation, in the same direction, of freight of the same class or kind, for an equal or greater distance over the same railroad and connecting lines of railroad; and every such company or person who violates, or permits to be violated, the provisions of this section, shall forfeit and pay to the party aggrieved a sum equal to double the amount of the overcharge, but in no case less than twenty-five dollars, and shall also, for every such unlawful act, forfeit and pay to the state a penalty of not less than one hundred nor more than one thousand dollars, to be recovered in a civil action, brought in the name of the state, by the prosecuting attorney of the county wherein such offense was committed, as part of his official duties, whenever complaint is made to him, and he is satisfied that the provisions of this section have been violated. 69 v. 27, § 1.

A railroad company may not contract to carry for one shipper at half the rate it charges others and as part of the agreement bind itself to charge all others double and pay such favored shipper half when collected, in consideration of his agreeing to establish and maintain a system of pipe lines to its road; and money so paid by a shipper, in ignorance of the agreement, and received by the favored shipper, may be recovered back in an action for money had and received by the former against the latter. *Brundred v. Rice*, 49 Ohio St. 640.

All shippers have a right to an equal rate under like circumstances; whether shipper has paid the increase of freight in case of discrimination, or has been obliged to sell for a lower price, he may recover the difference; although the object of the railroad company was to make money, if the natural and intended consequence was to injure the business of plaintiff, the company is guilty of malice and liable to punitive damages, which may include reasonable attorney's fees. *Ry. Co. v. Scofield et al.*, 2 C. C. 305.

Charging a lower rate for oil in tank cars than in barrels or car-load lots is an unlawful discrimination which the court can correct by *quo warranto*; that it was necessary in order to secure the favored shipper's custom, and that it related to inter-state traffic, is immaterial. *State v. Ry. Co.*, 47 Ohio St. 130.

(§ 3373-1.) Sec. 2. Railroad companies must furnish equal facilities to shippers of same class—Liability of company to damages for violation—

It shall be the duty of all railroad companies and of all persons operating a railroad, to secure and extend to all persons, companies and corporations, the same and equal opportunities and facilities for receiving and shipping freights of all kinds, of the same class [and the same and equal opportunities and facilities for receiving and shipping freights of all kinds of the same class], that such railroad company or the person operating such railroad, extends to, has used or enjoys, of and concerning freights owned by such railroad company, or the person operating such road or any of the officers or stockholders therein, or in which it, they or either of them have any interest, and any railroad company or person operating any railroad failing to comply with or observe the provisions or requirements of this section, shall be liable in a civil action to the party injured for the damages sustained, but for any violation of this section the recovery in any such action shall be not less than five hundred dollars. 88 O. L. 429.

(§ 3373-2.) Sec. 3. Telegraph operator must send message for passenger delayed by accident or collision—Penalty—

That in case of any accident to or collision between any railroad train or trains, by reason of which any passenger is delayed, it shall be unlawful for any telegraph operator, at any office on the line of such railroad, whether he is employed by a railroad company or a telegraph company, or both, or whether the office or station of which he has charge is a general commercial office, a railroad telegraph office only, or otherwise, to fail, neglect, or refuse, on tender of the usual or regular charge at regular commercial offices, to receive from any persons so delayed, any telegram tendered during that time for transmission, or to send the same direct, to the person and point designated, forthwith, and without any alteration, revision, or approval of any person, and any such telegraph operator failing to observe or violating any of the provisions of this section, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), and stand committed until the fine and costs are paid, and if such violation arose from observing any order or rule of his employer, his employer shall repay to him such fine and costs, and the same may be recovered in a civil action. 88 O. L. 429.

§ 3374. Rates of passenger fare prescribed—

A company operating a railroad, in whole or in part, in this state, may demand and receive for the transportation of passengers on its road not exceeding three cents per mile, for a distance of more than eight miles; but the fare shall always be made that multiple of five nearest reached by multiplying the rate by the distance. 73 v. 101, § 13.

Where section hand who rode to his work voluntarily and without protest on hand car was killed by passenger train without carelessness in running the train, it was held the railroad company could not be required to respond in damages. *P. C. & St. L. Ry. Co. v. Leech*, Adm'r, 41 Ohio St. 388.

The provision in the twelfth section of the general railroad act of February 11, 1848 (46 v. 40), that no reduction shall be made in the rates of fare and charges for freight allowed to companies organized under that act, unless their net profits for the previous ten years amount to ten per cent on their capital, is in the nature of a contract, and binding on the state (*Railroad Co. v. Furnace Co.*, 29 Ohio St. 208); and companies organized under that act before the adoption of the present constitution, and which have not relinquished their right to be governed thereby, and had not realized a net profit of ten per cent on their capital for the ten years next preceding the passage of the act of March 30, 1875 (72 v. 142), are not bound by the provisions of the latter act reducing their rates of fare and freight below those allowed by the twelfth section of the act of 1848. *Id.*

When the railroad of one company is purchased by another company, in pursuance of a statute authorizing the purchase, in the absence of any provision of law to the contrary, the road passes to the purchasing company, subject to the same restrictions and limitations as to rates chargeable for transportation as attached to it in the hands of the vendor. *Campbell v. Railroad Co.*, 23 Ohio St. 168.

When a person purchases a ticket, and takes a seat in a railroad train, and after the train starts gives up his ticket to the conductor, he cannot, at an intermediate station, by virtue of his subsisting contract, leave such train while in the reasonable performance of such contract, and claim a seat upon another train. *Railroad Co. v. Bartram*, 11 Ohio St. 457.

If a railroad company fix two rates of passenger fare for a distance less than thirty miles—to wit, a ticket rate and car rate, the former within, and the latter beyond, the limits of its authority, and the conductor of the train, under the direction of the company, refuse to accept from the passenger less than the illegal and unauthorized rate, it is not necessary, to enable the passenger to remain on the train, to tender more than the ticket rate, although the company might have fixed such ticket rate at a higher sum. *Smith v. Railroad Co.*, 25 Ohio St. 10.

A railroad company has the right to prescribe reasonable conditions for the admittance of way passengers upon its freight trains; and payment of fare to its office agents, or procuring a ticket prior to taking passage on such trains, is not an unreasonable condition; and an offer to pay fare to an em-

ploye on the train who has no authority to receive the same is not an offer to the company, and in such case does not entitle the person to a place on the freight train as a passenger. *Railroad Co. v. Bartram, supra.*

A railroad company has the right to prescribe reasonable rules for the government of its employes in the conduct of its business upon its trains, and passengers should conform to such rules; and a rule which requires a conductor to eject from the train a passenger who refuses to produce a ticket, or pay his fare, on demand, is a reasonable rule, and the purchaser of a non-transferable commutation ticket, who has lost it, and refuses, on account of such loss, to pay his fare upon a train, falls within the rule, and cannot maintain an action of tort against the company to recover damages for being ejected by the conductor for non-compliance with it. *Crawford v. Railroad Co., 26 Ohio St. 580.*

A railroad company has the right to require passengers to pay fare, and a rule directing its conductors to remove from the cars those who refuse to comply with the requirements is reasonable; and the fact that a ticket has been purchased by a passenger, which was afterward wrongfully taken up by a conductor of one of defendant's trains, will not relieve the passenger from the duty of providing himself with a ticket, or paying fare on another train of the defendant in which he may be a passenger; and in such case the right of action of the passenger would be for the wrongful taking up of the ticket, and not for having been removed from a train by another conductor for refusing to pay fare. *Shelton v. Railway Co., 29 Ohio St. 214.*

A purchaser from a railroad company of a ticket, which entitled the purchaser to a ride upon its cars a certain number of times within a given period, for a price below the usual rate of fare, and which specified on its face that it was good only during such period, having failed to ride the specified number of times within the period named, is not entitled to ride upon such ticket after the expiration of the period. *Powell v. Railroad Co., 25 Ohio St. 70.*

A passenger upon a railroad train refused to pay the established rates, which were higher than those allowed by law, and tendered the legal rate, and, upon refusal to pay more, was ejected from the train by the conductor, but without rudeness or unnecessary violence, and brought his action for damages against the company; it appearing on the trial that the passenger knew the established rates, and took passage expecting to be ejected from the cars, intending to bring an action therefor, it was held that he was only entitled to compensatory damages, and the company, for the purpose of mitigating damages, and preventing the recovery of exemplary damages, might give in evidence subsequent declarations of the plaintiff, tending to prove that his object in taking passage on the cars was to make money by bringing suits against the company for demanding or receiving their established rates of fare. *Railroad Co. v. Cole, 29 Ohio St. 126.*

Section construed. *Heaton v. C. H. & D. R. R. Co., 1 N. P. 433, and Wells v. R. R. Co., 61 Ohio St. 268, affirming 17 C. C. 201.*

Where a passenger is by the fault of the station agent induced to take a train which does not stop at the station to which he has purchased his ticket, and is ejected before reaching his destination, he may recover as for a tort, not merely for breach of contract. *Ry. Co. v. Reynolds, 55 Ohio St. 370.*

For forfeiture by railroad company for overcharge, see *Railway Co. v. Moore*, 33 Ohio St. 384 and *Railroad Co. v. Cook*, 37 Ohio St. 265.

An agent authorized to sell tickets and stamp and deliver them when paid, cannot bind his company by stamping and delivering the tickets to a third person, to be sold by him and to be paid for when sold, and an innocent holder acquires no title thereto. *Frank v. Ingalls, Receiver*, 41 Ohio St. 560.

Where instruction to agents and uniform custom was to sell mileage tickets only upon purchaser signing the same and thereby consenting to conditions printed thereon, but such ticket was sold to plaintiff, who was ignorant of such conditions, without requiring his signature, and was several times honored by defendant's conductor; held, the requirement of signing was waived, and conductor was not justified in ejecting plaintiff upon his refusal to sign ticket and pay fare in money. *Kent v. R. R. Co.*, 45 Ohio St. 284; *R. R. Co. v. Mortal*, 18 C. C. 562.

A railroad company may charge higher rate on train than at ticket office, but not to exceed the maximum allowed by law. *R. R. Co. v. Skillman*, 39 Ohio St. 451.

§ 3375. Rates of freight prescribed—

Such company may receive for transportation of property not exceeding five cents per ton per mile, when the same is transported a distance of thirty miles or more, and, in case the quantity transported is less than one ton in weight, or any quantity is transported a less distance than thirty miles, such reasonable rate as may be from time to time fixed by the corporation, or prescribed by law; but, until a tariff of specific rates is established by law for the transportation of property of such bulk that a quantity equal to the tonnage capacity of the car cannot be carried in it, the corporation may contract for space in the car sufficient to secure the safe transportation of such property, at a rate which shall not exceed five cents per ton per mile if such car were loaded to its tonnage capacity; and for the transportation of coal, pig-iron, limestone, iron ore, or undressed stone or lumber, not more than five cents per ton per mile shall be charged for any distance of ten miles or more, and, in case the same be transported a less distance than ten miles, such reasonable rates as may from time to time be fixed by the corporation, or prescribed by law; and the corporation may charge on such freight a reasonable rate for loading and unloading, when the same is in fact done by the corporation. 73 v. 102, § 13.

Where the charter of a railroad company authorized it to charge not to exceed a specified rate of fare or freight for a distance of thirty miles or more, and for a less distance than thirty miles such reasonable rates as may

be, from time to time, fixed by the company, a rate for a distance less than thirty miles which exceeds the maximum allowed for full thirty miles is, as matter of law, unreasonable to the extent of the excess; but when the rate for the shorter distance does not exceed the maximum allowed for thirty miles, the question whether or not the rate is reasonable is for the jury, and to be determined in accordance with the evidence and such instructions of the court as are applicable. *Smith v. Railroad Co.*, 23 Ohio St. 10; *Campbell v. Railroad Co.*, *Id.* 168.

Railroad company is common carrier, and subject to judicial control; if lower rate is given to a favored shipper, other shippers can require equal rate; rebate given to shippers furnishing greater quantity of freight than others is an unlawful discrimination, and is contrary to public policy; if continuous series of shipments are necessary in conducting the business of other shippers, they may prevent such discrimination by injunction without first establishing their rights at law. *Scofield v. L. S. & M. S. Ry. Co.*, 43 Ohio St. 571; followed, 43 B. 33.

Contracts for transportation for a fixed period of years are not *ultra vires* because they bind the corporation for a fixed time. *R. R. Co. v. Furnace Co.*, 37 Ohio St. 321. Whether rates of freight are reasonable or not depends on the circumstances of each case; and if the shipper is compelled to pay illegal rates in order to procure the carrier's services, the payments are not voluntary, and may be recovered back. *Peters v. R. R. Co.*, 42 Ohio St. 275.

§ 3375a. Who permitted to ride upon freight trains—

Physicians in the discharge of their professional duties and sheriffs and deputy sheriffs in the performance of their official duties shall be permitted to ride, at their own risk, and take a prisoner or prisoners upon freight trains, between stations where such trains stop, paying therefor the regular passenger fare. 89 O. L. 275.

Not necessary that trains stop regularly at such station, nor that sheriff have a prisoner in charge. *Allen v. Ry. Co.*, 57 Ohio St. 79.

§ 3376. Penalty for violation of two preceding sections, or of 3340 and 3341—How recovered—

That any such company which violates or permits to be violated any of the provisions of the two preceding sections, or of sections *thirty-three hundred and forty* and *thirty-three hundred and forty-one*, or which demands or receives a greater sum of money for the transportation of passengers or property, or for the service provided for in either of said sections, *thirty-three hundred and forty* and *thirty three hundred and forty-one*, than the sum allowed by law, shall pay to the party aggrieved for every such overcharge a sum equal to double the amount of the over-

charge; and any officer, employe or agent of any such company who violates, or permits to be violated, any of such provisions, or demands or receives such sum of money, shall be subject to the like penalty to the party aggrieved; but in no case shall the amount to be paid be less than one hundred and fifty dollars to any bona fide claimant using the road of such company, or demanding or receiving any of the service provided for in said sections *thirty-three hundred and forty* and *thirty-three hundred and forty-one* in due course of business. Provided that a separate action shall be brought for each overcharge, unless the party aggrieved give notice in writing at the time of such overcharge, except the first one, to the officer, agent or employe of such railway making or receiving such overcharge, of his intention to bring such action; and no judgment shall be rendered in any action for the penalties herein provided for more than one overcharge, unless such written notice shall have been given by the party aggrieved, 94 O. L. 220.

See *R. R. Co. v. Moore*, 33 Ohio St. 384; *R. R. Co. v. Cook*, 37 Ohio St. 265; *Ry. Co. v. Furnace Co.*, 49 Ohio St. 102.

§ 3376a. To what actions this act applies—

Section *thirty-three hundred and seventy-six*, as amended by this act, shall apply to all actions now pending, excepting the provisions requiring notice of intention to commence such action to be given as therein required. 94 O. L. 220.

§ 3377. When the three preceding sections do not apply—

The provisions of the three next preceding sections shall not apply to any railroad in course of construction, and the gross earnings of which are less than four thousand dollars per mile per annum, when such railroad is not owned or operated by companies operating another railroad: provided, that such exemption shall not continue longer than five years after cars are run for the transportation of freight and passengers on said road. 73 v. 102, § 13.

§ 3378. Rates of fare and freight on branch roads—

A company may demand and receive, for the transportation of passengers on a branch road, a fare not exceeding six cents per mile, and for transportation of property such reasonable rate as may be from time to time fixed by the company, or prescribed

by law; but, if the length of such branch exceeds ten miles, the charge for passengers and freight, upon the excess shall be the same as provided by law for main lines. 69 v. 203, § 4.

§ 3378a. Certain contracts for sale of railroad property not valid, when—

No contract of, or for the sale of railroad equipment, rolling stock, or other personal property (to be used in or about the operation of any railroad), by the terms of which the purchase money, in whole or in part, is to be paid in the future, and wherein it is stipulated or conditioned that the title to the property so sold shall not vest in the vendee, but shall remain in the vendor until the purchase money shall have been fully paid, shall be valid against creditors or innocent purchasers for value, unless recorded in the office of the secretary of state, or a copy thereof filed in the office of said secretary of state, and, when said contract is so recorded, or a copy thereof so filed as aforesaid, the title to the property so sold, or contracted to be sold, shall not vest in the vendee, but shall remain in the vendor until the purchase money shall have been fully paid, and such stipulation or condition shall be and remain valid, notwithstanding the delivery of the property to, and its possession by such vendee. 79 O. L. 45.

**§ 3378b. Conditional sale provided for in written lease—
Where title vested until purchase money paid—**

In any written contract for the renting, leasing or hiring of such property (to be used as aforesaid), it shall be lawful to stipulate or provide for a conditional sale of such property at the termination of such renting, leasing, or hiring, and to stipulate or provide that the rental reserved shall, as paid, or when paid in full, be applied to and treated as purchase money; and in such contract it shall be lawful to stipulate or provide that the title to such property shall remain in the lessor or vendor until the purchase money shall have been fully paid, notwithstanding delivery to and possession by the other party; subject, however, to the requirement as to recording or filing contained in the foregoing section of this act. 79 O. L. 45.

§ 3378c. Secretary of state to file contracts, his fees, etc—

The secretary of state, when so requested, and upon being paid

the proper fees, shall record any such contract, and shall file in his office a copy of any such contract, when the same shall be delivered to him for that purpose, and for every such copy so filed he shall be entitled to receive one dollar. 79 O. L. 45.

§ 3378d. Construing application of foregoing sections—

The provisions of the foregoing sections *thirty-three hundred and seventy-eight (a)*, *thirty-three hundred and seventy-eight (b)*, and *thirty-three hundred and seventy-eight (c)*, shall extend and apply, not only to contracts made with a railroad company, as vendee or lessee, but also to all contracts which may be made with any corporation, company, or person, as vendee or lessee, by which any such corporation, company, or person shall undertake to purchase, rent, lease, or hire any railroad equipment, cars, rolling stock, or other personal property, designed for use on, or in connection with, a railroad or railroads, in this or other states. 86 O. L. 255.

(§ 3378-1.) Sec. 1. Authorizing railway companies to issue storage or warehouse certificates—

Any railway company, organized under the laws of this state, upon the receipt of iron ore or grain or other merchandise from any vessel, water-craft, or other source, for storage and deposit, duly consigned to said company, may, upon the request or demand of the owner or owners of said ore, grain, or other merchandise, and with the written consent of the consignee, issue to the owner or owners of said ore, grain or other merchandise, a certificate, receipt or voucher, which certificate, receipt or voucher shall name the railway company by whom said ore or grain or other merchandise is held at the time said certificate, receipt or voucher is issued, to whom said ore, grain or other merchandise was consigned, the quantity held by said company, and, so near as may be, the quality or grade thereof, but not incurring any liability for the grade or quality, which certificate, receipt or voucher shall be signed by the president or vice-president of said company, and countersigned by the general agent of said company appointed for that purpose, or such other officers as may be appointed by said railway company, and shall be transferable and negotiable by indorsement thereon, by the person or persons to whose order the same is made payable. That on the presentation

of said certificate, receipt or voucher, so indorsed, to said railway company at its general offices, the holder or holders thereof and on demand, the said railway company shall deliver to said holder or holders, the iron ore or grain or other merchandise so described therein, on the payment by such person or persons to said railway company of proper charges thereon. 86 O. L. 52.

(§ 3378-2.) Sec. 1. Bicycle as baggage—

Hereafter, for the purposes herein specified, bicycles, with or without lanterns or tool-boxes attached, are declared to be baggage, and shall be transported as baggage for passengers, by all railroad companies operating in this state, and be subject to the same charges and liabilities as other baggage, and no passenger shall be required to crate, cover, or otherwise protect any such bicycle; provided, however, that a railroad corporation shall not be required to transport, under the provisions of this act, more than one bicycle for a single person. 93 O. L. 24.

(§ 3378-3.) Sec. 1. Railroad companies required to furnish bills of lading—Effect of such receipt—

All railroad companies operating any line of railway in the State of Ohio, upon demand of any person or corporation desiring to ship goods or merchandise of any kind in car lots, at any railway station or shipping point in the State of Ohio, shall count or check the packages composing each lot or car load, and furnish to the shipper of such goods a receipt or bill of lading, specifying the number of packages shipped in each car; and such receipt shall bind the railroad company so executing the same to deliver the same number of packages so specified at the place of destination named in such bill of lading.

(§ 3378-4.) Sec. 2. Penalty—

Any railroad company, or any agent or officer thereof, refusing to comply with the provisions of this act, shall be liable to a penalty of fifty dollars, to be recovered by civil action against the railroad company by which such agent or officer is employed, or to which company such goods are offered for shipment. 91 O. L. 207.

CONSOLIDATION.

§ 3379. When companies may consolidate—

When the lines of road of any railroad companies in this state, or any portion of such lines, have been or are being so constructed as to admit the passage of burden or passenger cars over any two or more of such roads continuously, without break or interruption, such companies may consolidate themselves into a single company. 74 v. 71, § 1.

Consolidated railroad companies, organized in pursuance of the act of April 10, 1856 (53 v. 143), are corporations formed under a general law, within the meaning of article thirteen, section two, of the constitution of 1851, and as such are subject to the limitations and reservations contained in that section, and in article one, section two, of that instrument; and the general assembly has power to alter and regulate rates of fare chargeable by such companies. *Shields v. State*, 26 Ohio St. 86.

Parties to an agreement to consolidate under the act of April 10, 1856, *supra*, continue in the full enjoyment of their powers and franchises, respectively, and may accept subscriptions to their capital stock, at any time before consolidation is consummated, by filing the agreement of consolidation with the secretary of state. *Railroad Co. v. Brown*, 26 Ohio St. 223.

Subscriptions to the capital stock of such corporations are to be construed with reference to consolidation statutes in force, and subscribers are bound thereby, as if the statutes were part of the contract of subscription; and a person who becomes a subscriber to such stock during the progress of consolidation, is to be regarded as a stockholder within the meaning of section ten of that act. *Ib.*

After consolidation is completed by filing a certificate with the secretary of state, the new corporation thereby created can succeed to the rights, powers, and franchises of the original corporations only by operation of the statute, which provides for such succession only upon the election of the first board of directors of the new corporation, and such election is not authorized by the statute before consolidation has been consummated by filing the certificate with the secretary of state. *Ib.*

The new consolidated company, in an action for money due on subscriptions to the capital stock of the original corporations, must show that it has succeeded to the rights of its predecessors upon an election of a board of its own directors. *Ib.*

After consolidation, the new corporation thereby created may perform the conditions named in subscriptions to the capital stock of the original companies, and it may also, by the performance of the conditions, accept a continuing conditional offer to subscribe such stock. *Railroad Co. v. Stout*, 26 Ohio St. 241.

When a general requisition is duly made by a railroad company, during the pendency of consolidation proceedings, for the payment of subscriptions to its capital stock in monthly installments, and the consolidation be-

comes complete before all the installments are due, such requisition will continue in force for the benefit of the consolidated company, provided an officer authorized to receive such payments be continued at the place named in the call; and such requisition applies to conditional subscriptions as soon as the condition is performed, and to subsequent subscriptions made before consolidation is complete, as well as to subscriptions absolute at the date of the call. *Id.*

Under the first section of said act, as amended May 6, 1869 (66 v. 127), it is a condition precedent to the right to enter into an agreement for consolidation that the lines of road of the contracting corporations be first made, or be in progress of construction; and a conditional subscriber, who had no knowledge of the progress of consolidation, and in no way contributed thereto, may, in an action by the new company as successor to the old, to recover the amount of his subscription, dispute the corporate existence of the plaintiff, on the ground that, at the date of the agreement to consolidate, the road of the company, to the stock of which he had subscribed, was neither made nor in process of construction. *Id.*

Railroads parallel and competing cannot be consolidated under this section. *State v. Vanderbilt*, 37 Ohio St. 590.

Nor can railroads connected only by leased railroad be consolidated. *Id.*

When the tracks of railroad companies seeking consolidation are connected by tracks of a "Union Company," organized to secure union depot and terminal facilities for such roads, etc., such railroads form "a continuous line" under section 3380; railway companies seeking consolidation may agree upon the number and amount of shares of the consolidated company, and classify the same into "common" and "preferred," and may issue a greater or less number of shares than the aggregate of the constituent companies, in order to secure a just division of property. *Burke v. Railroad Co.*, 22 B. 11.

For various points as to right and effect of consolidation, see *Adelbert College v. Ry. Co.*, 3 N. P. 15 (C. P.); reversed, 13 C. C. 590, on another point.

§ 3380. Consolidation of domestic with foreign railway corporation—

A company organized in this state for the purpose of constructing, owning and operating a line of railway, or whose line of road is made or is in process of construction to the boundary line of this state, or to any point either in or out of the state, may consolidate its capital stock with the capital stock of any company in an adjoining state, organized for a like purpose, and whose line of road has been projected, constructed, or is in process of construction to the same point, where the several roads so united and constructed will form a continuous line for the passage of cars, and roads running or to be constructed to the bank of a river which is not bridged, or to the tracks and property of a union depot

company, the use of which is enjoyed by either of the companies so proposed to be consolidated, shall be held to be continuous under this section. 87 O. L. 219.

§ 3381. Proceedings to effect consolidation—

The consolidations shall be made under the conditions and restrictions following:

1. The directors of the several companies may enter into a joint agreement, under the corporate seal of each company, for the consolidation of the companies, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new company, the number of directors and other officers thereof and their places of residence, the amount of the capital stock of the new company agreed upon, the number of shares of capital stock, the amount of each share, and the manner of converting the capital stock of each of the constituent companies into that of the new company, with such other details as they may deem necessary to perfect the new organization and the consolidation of the companies.

2. The agreement shall be submitted to the stockholders of each of the companies, at a meeting thereof called separately for the purpose of taking the same into consideration, due notice of the time and place of holding such meeting and the object thereof shall be given by written or printed notices addressed to each of the persons in whose names the capital stock of the companies stands on the books thereof, and also by a like notice published in some newspaper in the city or town where such company has its principal office or place of business; provided, that in case all the stockholders are present at such meeting, in person or by proxy, such notice may be waived in writing. At the meeting of stockholders, the agreement of the directors shall be considered, and a vote by ballot taken for the adoption or rejection of the same; each share of stock on which has been paid all the installments called for by the board of directors, entitling the holder thereof to one vote; the ballots shall be cast in person or by proxy, and if two-thirds of all the votes cast at the meeting be for the adoption of the agreement, that fact shall be certified thereon by the secretary of each of the companies, and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the secretary of state. And all consolidation agreements heretofore en-

tered into and ratified by such companies, substantially in manner as in this section prescribed, shall be as valid as if entered into and ratified by virtue of this section. 82 Ohio L. 150.

For further restrictions, see *State v. Vanderbilt*, 37 Ohio St. 590, and *Railway Co. v. Jewett*, 37 Ohio St. 649.

Where bonds were issued by a company which afterward was consolidated with another under a stipulation that said bonds should be "protected" by the new company, and the new company issued bonds under which the road was sold by foreclosure, the decree being "without prejudice to any claim which may be made by the holders" of the first mentioned bonds; held, that the holders of these bonds have the right to require the property of the company that issued them to be applied to their payment. *Compton v. Ry. Co.*, 45 Ohio St. 592.

§ 3382. Effect of agreement to consolidate—

When the agreement is made and perfected, as provided in the preceding section, and the same or a copy thereof filed with the secretary of state, the several companies parties thereto shall be deemed and taken to be one company, possessing within this state all the rights, privileges, and franchises, and subject to all the restrictions, disabilities, and duties, of a railroad company. 53 v. 143, § 3; S. & C. 327.

See notes under section 3379.

(§ 3382-1.) Sec. 1. Consolidation agreements—

In all cases where the agreement for the consolidation of railroad companies heretofore filed in the office of the secretary of state, is defective, by reason of the omission of a statement either of the number of the directors or other officers, or their places of residence, or the number of shares of capital stock, as required in such agreement by the laws of this state, such defect may be cured by filing, in the office of the secretary of state, a certificate signed by the president and the secretary of the consolidated company named in such agreement under its corporate seal, setting forth such omitted statements, which shall thereupon be countersigned (considered) a part of the agreement of consolidation the same as if originally incorporated therein, and said agreement and all rights, remedies, powers, duties, and acts thereunder be construed accordingly, and the said agreement and certificate, and copies thereof, duly certified by the secretary of state, shall be held and received in all courts and other places, as constituting the agreement of the consolidation of such companies to all intents and purposes, as if

no such omission or defect had ever existed in such agreement; provided, that nothing in this act shall impair the rights of any person or corporation acquired prior to the passage of this act. 79 O. L. 126.

(§ 3382-2.) Sec. 1. Authorizing the curing of defects in the consolidation of certain railway companies—

In all cases where the agreement, or certified copy thereof, for the consolidation of railroad companies, heretofore filed in the office of the secretary of state, is defective, by reason of the omission of a statement of the place of residence of the directors and the number and places of residence of the other officers, as required in such agreement by the laws of this state, but when in pursuance of such agreement an election of directors has been had, and other officers have been elected or appointed, all such defects in said agreement, and any defect in the certificates thereon, may be cured by filing in the office of the secretary of state a copy of the proceedings of said election, duly certified by the secretary of said company to be such copy under the corporate seal of such company, and a certificate signed by the president and secretary of the consolidated company named in such agreement under its corporate seal, setting out the places of residence respectively of the directors first elected, and of the officers first elected, or appointed, at the time they were so first elected or appointed, as well as their residences respectively at the time of the filing of the certificates last above mentioned, which shall thereupon be considered a part of the agreement of consideration, the same as if originally incorporated therein; and upon filing said certified copy of said proceedings and certificate, all such defects existing prior to the filing of said certified copy of said proceedings and certificates shall be cured, and the several acts of said company shall be held valid, and the said agreement and all rights, remedies, powers, duties, and acts thereunder be construed accordingly, and the said agreement, proceedings and certificates and copies thereof, duly certified by the secretary of state, shall be held and received in all courts and other places as constituting the agreement of consolidation of such companies, to all intents and purposes as if no omission had ever existed in such agreement or the certificate thereto. Provided, that nothing in this act shall impair the

rights of any person, firm or corporation acquired prior to the passage of this act. 84 O. L. 8.

(§ 3382-3.) Sec. 1a.

That in all cases where the agreement, or a certified copy thereof, for the consolidation of railroad companies, heretofore filed in the office of the secretary of state, states the number of shares or the capital stock of the new company and the amount of each share, but is defective by reason of the omission of a statement of the amount of the capital stock of the new company agreed upon, as required by the laws of this state in such agreement, such defect may be cured, by filing in the office of the secretary of state a certificate, signed by the secretary of such consolidated company, under its corporate seal, setting out the amount of the capital stock of the new company agreed upon, which shall be ascertained by multiplying the number of shares of capital stock named in said agreement by the amount of each share named in said agreement in dollars, as shown in the original agreement or the certified copy thereof filed in the office of the secretary of state, and which said certificate shall thereupon be considered a part of the agreement of consolidation the same as if originally incorporated therein; and upon filing said certificate such defect shall be cured, and such consolidation and the several acts of said company shall be held valid, and the said agreement and all rights, remedies, powers, duties and acts thereunder be construed accordingly; and certified copies of the said certificate and the agreement of consolidation, duly certified by the secretary of state, shall be held and received in all courts and other places as constituting the agreement of consolidation of such companies, to all intents and purposes as if no omission or defect had ever existed in such agreement. Provided, that nothing in this act shall impair the rights of any person, firm or corporation acquired prior to the passage of this act. 84 O. L. 29.

§ 3383. Election of directors of consolidated company—

The stockholders at the meeting called to take into consideration the agreement, shall, after the adoption of the same, appoint a time and place for the election of the directors and other officers of the new company, notice of which shall be given by the secretary of each of the companies in some newspaper printed or

of general circulation, at the place of the principal office of each company, at least three weeks previous thereto; provided, that if at such meeting all the stockholders of the constituent companies are present, either in person or by proxy, they may, in writing or by resolution, waive such notice, and consent to hold such meeting and election at any time, which election shall be conducted in such manner as may be prescribed by the stockholders at such meeting. 82 O. L. 151.

That part of stockholders were enjoined from participating in the election is no ground for appointment of a receiver. *Railway Co. v. Jewett*, 37 Ohio St. 649.

§ 3384. Property of the old companies vests in the new—

Upon the election of the first board of directors of the company created by the agreement of consolidation, all and singular the rights, privileges, and franchises of each of the companies to the agreement, and all the property, real, personal and mixed, and debts due on account of subscription of stock, or other things in action, shall be deemed to be transferred to and vested in such new company, without further act or deed; all property, rights of way, and other interests, shall be as effectually the property of the new company as they were of the companies parties to the agreement; the title to real estate, either by deed, gift, grant, or by appropriations under the laws of this state, shall not be deemed to revert or be impaired by reason of the consolidation; but all rights of creditors, and all liens upon the property of either of such companies, shall be preserved unimpaired, and the respective companies may be deemed to be in existence to preserve the same; and all debts, liabilities, and duties of either of said companies shall thenceforth attach to the new company, and be enforced against it to the same extent as if such debts, liabilities, and duties had been contracted by it. 53 v. 143, § 5; S. & C. 328.

Where a railroad company, in consideration of right of way, agreed to maintain a water-way, and was afterward consolidated with another company, the purchaser of the railroad at a subsequent judicial sale was held bound by said contract, and specific performance enforced. *Bell v. Railroad Company*, 3 C. C. 31.

§ 3384a. Consolidated companies may dispose of stock and bonds acquired by consolidation—

That any consolidated railroad company formed by the con-

solidation of a railroad company or companies created by or existing under the laws of this state and any other state or states, with a railroad company or companies of this state or of any other state, may take, hold, pledge or otherwise dispose of under such terms and agreements as the board of directors of such consolidated railroad company may prescribe, the stock and bonds of any other company acquired upon consolidation or received by virtue of any purchase or lease or operating contract heretofore or hereafter made or executed, and may maintain and operate any railroad purchased under authority of law, and may lease or contract to operate any part or all of a railroad constructed or in the course of construction by another company of this state or of any other state, if the line of road covered by such lease or operating contract is connected with the line of road of such consolidated railroad company, upon such terms as may be agreed upon between the companies. 87 O L. 183.

§ 3384b. Consolidated company may issue its own stock in lieu of purchase-money—Rights, franchises, etc., of railroad acquired by purchase vested in consolidated company—Rights of stockholders; how affected—

Whenever any consolidated railroad company described in the next preceding section of this act, is in possession of or operating in connection with or extension of its own railroad line or lines, any other railroads or railroad in this state or in any other state or states under any purchase, conveyance, lease, contract, or agreement, such consolidated railroad company may take a surrender or transfer of the whole or any part of the capital stock of the company conveying, leasing, or owning such railroad, from any one or more stockholder or stockholders, and issue in exchange therefor the like additional amount of its own capital stock at par, or on such other terms and conditions as may be agreed upon by the directors of the consolidated railroad company; and whenever the whole of the said capital stock shall have been so surrendered or transferred, and a certificate thereof filed in the office of the secretary of state, under the common seal of the consolidated railroad company to whom such surrender or transfer shall have been made, the estate, property, rights, privileges, and franchises of the said company whose stock shall have been so surrendered or transferred, shall thereupon vest in and

be held and enjoyed by the said consolidated railroad company to whom such surrender or transfer shall have been made, as fully and entirely, and without change or diminution, as the same were before held and enjoyed, and be managed and controlled by the board of directors of the said consolidated railroad company to whom such surrender or transfer of the said stock shall have been made, and the two companies shall thenceforth be consolidated and be one company under the corporate name of such consolidated railroad company, without any other formalities or proceedings whatever; but nothing herein contained shall relieve the said consolidated company from paying the fee specified in paragraphs two (2) and three (3) of section 148a of the Revised Statutes, as amended February 12, 1889. The rights of any stockholder not so surrendering or transferring his stock, shall not be in any way affected hereby, nor shall existing liabilities or the rights of creditors of the company, where stock shall have been so surrendered or transferred be in any way affected or impaired by the provisions of this section. 87 O. L. 181.

§ 3385. Principal office—Directors—General office—

The new company shall, as soon as convenient after the consolidation, establish a principal office at some point in this state on the line of its road, and may change the same at pleasure; but public notice of such establishment or change shall be given in some newspaper. But this section and the other laws of this state respecting the residence of directors of corporations and the keeping of a principal or general office and the records of corporations, shall not apply to consolidated railroad companies formed by the consolidation of a railroad company or companies created by or existing under the laws of this state and any other state or states, with a railroad company or companies of this state or of any other state; and the election for directors of such consolidated railroad companies may be held at the principal office of the company, whether located in this state, or in any other state under the laws of which the said consolidated railroad company may have been created; provided, however, that at least two of the directors of such consolidated railroad company shall be residents of this state, and that a general office of the company shall be maintained at some place within this state, of which notice shall be given as aforesaid. 87 O. L. 181.

§ 3386. Actions against new company—

Suits may be brought and maintained against the new company in the courts of this state, for all causes of action, in the same manner as against other companies. 53 v. 143, § 7; S. & C. 328.

§ 3387. Taxation of road partly in this state—

That portion of the road of such consolidated company in this state, and all its real and personal property, shall be listed for taxation and taxed in the same manner as the road and property of other railroad companies in this state; and to ascertain the proportion of the rolling machinery subject to taxation in this state, the officer listing the same shall ascertain the value of all the rolling machinery of the company, and return a sum bearing such proportion to the value of the whole as the length of the line of such road in this state bears to the length of the whole line. 53 v. 143, § 8; S. & C. 328.

See notes under section 2744.

§ 3388. Stockholder refusing to consolidate shall be paid highest market value for stock, etc.—Arbitration of value of stock—Proceedings when stockholder refuses to arbitrate—Deposit of award—Preferred stock—

A stockholder who refuses to convert his stock into the stock of the consolidated company shall be paid the highest market value of such stock at any time within two years next preceding the time of the making of such agreement for consolidation by the directors, if, previous to such consolidation, he so require; and if a stockholder so refusing to consolidate, and the board of directors of the company desiring to consolidate, cannot agree as to the value of such stock, the parties may submit the question to arbitration, which arbitration shall be conducted in accordance with the law regulating arbitrations, so far as the same may be applicable, by three disinterested persons, to be appointed upon the motion of either of the parties by the judge of the probate court of the county in which the person owning the stock resides, or, in case he is a nonresident of any county through or into which the road passes, then in the county in which the principal office of the company is kept. If the person so refusing to con-

vert his stock refuses to submit the question to arbitration, the probate judge, upon the application of either of the companies desiring to consolidate, shall appoint the arbitrators, who shall proceed to ascertain the value of the stock, the same as if the question had been submitted by the consent of both parties; and if the party owning the stock refuses to receive the amount awarded in any case, the company may deposit the same with the probate court of the county in which the arbitration is held, which deposit shall authorize the parties to proceed to consolidate without further payment to such stockholder. Provided, however, if the agreement of consolidation provide that the preferred stock of the consolidated companies, or either of them, shall become and be the preferred stock of the consolidated company upon the same terms and conditions as those upon which it was issued, then this section shall not apply thereto. 89 O. L. 88.

Under the act of April 4, 1890 (87 O. L. 159), stockholder refusing to convert his stock into that of consolidated company could compel arbitration by three disinterested men of the question of the value of his stock; this right is not defeated by failure to make demand before the proposed consolidated company acquires the *status* of an incorporated company; it is the duty of company proposing to consolidate to ascertain who refuse to convert their stock, and cause the value of such stock to be ascertained and paid before the consolidation takes effect. Ry. Co. v. Garrett, 50 Ohio St. 405.

§ 3388a. Application of preceding section in consolidation of domestic with foreign corporation—

In all cases of consolidation provided for in section *thirty-three hundred and eighty* of the Revised Statutes, the provisions of the section hereby supplemented shall apply only to stockholders of companies created and organized under the laws of this state, and not to stockholders of any corporation organized or existing under the laws of any other state or states, it being the intention that the rights of stockholders of such companies shall be determined by the law of such other state or states. 89 O. L. 88.

§ 3388b. Proceedings heretofore commenced; repeals, etc.—

That this act shall not affect the rights of stockholders in companies which have heretofore commenced proceedings for consolidation; that said section *thirty-three hundred and eighty-eight*, as amended April 4, 1890, is hereby repealed; and this act shall

take effect and be in force from and after its passage. 89 O. L. 88.

§ 3389.

[Repealed. 87 O. L. 159.]

§ 3390. Notice to be given of application for such appointment—

In all such cases of arbitration the party desiring the arbitration shall give the opposite party at least ten days' notice of his intention to apply to the judge for the appointment of arbitrators, which notice shall be served in the same manner as is provided for the service of a summons, and shall specify the time and place of the hearing of the application; and in cases of non-residents the notice shall be by publication, for four consecutive weeks, in some newspaper printed in the county. 53 v. 143, § 11; S. & C. 329.

§ 3391. Effect of the agreement of consolidation as evidence—

A copy of the agreement and act of consolidation, duly certified by the secretary of state, shall be received in the courts of this state as prima facie evidence of the existence of the several companies parties to the agreement prior to and at the time of the execution of the agreement, of the consolidation of the companies as specified in the agreement, that such consolidation was authorized by the laws of the several states within which the several companies were chartered, and into which the consolidated road extends, and of all and singular the facts, statements, and covenants set forth and recited in the agreement and act of consolidation, and in the certificates indorsed thereon. 55 v. 8, § 1; S. & C. 329.

§ 3392. In actions against new company certain proof dispensed with—

It shall not be necessary to produce or prove the charters of the companies parties to such consolidation, the laws of the several states under and by virtue of which such consolidation was effected, or the original articles of consolidation, in any suit brought to charge such consolidated company with any liability of either of the companies parties to the act of consolidation, any

law or custom to the contrary notwithstanding. 55 v. 8, § 2; S. & C. 330.

§ 3392-1. Two or more companies owning a railroad may make division of interests and dispose of same—

In case two or more railroad companies, being the owners in common of the whole or any part of a railroad situate within this state, and by reason of inequality in the amount of business done thereon by each company, require a different degree and extent of improvement and development of the same, it shall be lawful for such companies to enter into any arrangement that may be agreed upon between them for enlarging, improving, developing or increasing the facilities of such railroad or any part thereof; and, in pursuance of such agreement, or otherwise, to make such division of the railroad and appurtenances so owned in common, and to execute and deliver each to the other, or to any other railroad company having authority to purchase the same, such deed or deeds of conveyance for the whole or any part of such railroad, as may be agreed upon between such companies; provided nothing herein contained shall impair the lawful lien of any creditor upon the railroad which may be conveyed as aforesaid. 80 O. L. 111.

§ 3392-2. Proceedings when such companies cannot agree upon division—

In case such companies shall be unable to agree upon an equitable plan for improving and developing or for the division and sale of the railroad and appurtenances or any part thereof so owned in common, it shall be lawful for either company from time to time to file with the commissioner of railroads and telegraphs a statement, under the seal of such company, of the character and estimated cost of any addition to, or change in the nature of the road-bed, the right of way, main or side track or tracks, bridges, culverts, buildings, structures, fixtures, or appurtenances, or either or any part thereof, of said railroad, or part of railroad, desired by such company, and of its inability to agree with the other joint owner or owners in respect to the making of such additions or improvements. Upon the receipt of such statement the commissioner of railroads and telegraphs

shall, within thirty days of the time of filing of such statement, appoint a time when the owners of such railroad or part of railroad may be heard respecting the reasonableness and necessity of such proposed additions or improvements, and give due notice, in writing, of the time and place of such hearing to each of the owners aforesaid, and it shall be lawful for such commissioner to make such order in respect to the reasonableness or necessity of the whole or any part of such additions or improvements, as well as the manner in which the same shall be made, and the periods within which the same shall be paid for, as to him shall seem proper, and his decision in the matter shall be final. 80 O. L. 111.

(§ 3392-3.) Sec. 3. The cost of additions or improvements; how paid—

The costs of such additions or improvements shall in all cases, unless otherwise agreed between the joint owners, be paid by them in proportion to their ownership in the joint property, irrespective of the amount of traffic which each owner may then have passing over such railroad. If either owner shall fail or refuse to pay the share of such cost as may be due from it on the basis herein fixed, or within the period or periods which may be fixed by the commissioner of railroads and telegraphs, as aforesaid, suit may be entered and judgment taken against the party so in default, and the judgment so entered shall be a valid lien upon the interest of the party in default in said railroad or part of railroad owned jointly as aforesaid, and such interest may be sold at public sale as in other cases upon execution, and it shall be lawful for any railroad company having authority to own or operate a railroad in this state to purchase such interest at such sale, and to enjoy and exercise in respect to the interest so purchased, all the rights, privileges and franchises which were exercised or enjoyed by the company owning the same at the time of said sale. Provided, that the compulsory power of enforcing additions or improvements provided for in this and the preceding section shall not extend to local or terminal depot or shop-grounds or facilities, the joint use of which shall not be needed by all the joint owners. 80 O. L. 111.

(§ 3392-4.) Sec. 4. Partition not to be compulsory—

Nothing contained in this act shall be held to imply or confer a right or power of compulsory partition of the joint property

against the will of either of the joint owners; but the same may be sold upon execution as herein provided. 80 O. L. 111.

(§ 3392-5.) Sec. 5. Company selling interest in road may purchase or condemn land along chartered route—

In case either company shall, pursuant to the agreement or to the proceedings aforesaid, sell or convey, or suffer to be sold or conveyed, its interest in the railroad or part thereof so owned in common, it shall be lawful for such company to acquire by purchase or condemnation such land as may be needed to enable it to construct and maintain and operate a railroad along and adjacent to such portions of its chartered route as may have been sold or conveyed aforesaid, and such company shall have and enjoy all rights and franchises in respect to such newly acquired railroad as were held and enjoyed in respect to said railroad sold or conveyed as aforesaid.

(3392-6.) Sec. 6. To what companies this act applies—

This act shall apply in case one or more companies, owners in common as aforesaid, shall have leased its interest in the portion of railroad so owned in common, and the lessee of such interest may unite with the lessor in the agreement provided for in section *one* of this act, or may, with such lessor and owner, be compelled to make or pay for the addition and improvements contemplated in this act. 80 O. L. 111.

REORGANIZATION.

§ 3393. When proceedings for reorganization may be had—

When proceedings are pending in any court for the sale of the road of a company under a mortgage or deed of trust, and two-thirds in interest of the creditors and two-thirds in interest of the stockholders of the company agree, in writing, upon a plan for the readjustment or capitalization of the debt and stock of the company, the court shall render judgment against the company for the amount due and in arrears upon such securities, which judgment shall, from its rendition, become a lien on all the property embraced in such securities, and upon all the franchises and powers of the company, including its franchise to be and act as a corporation, conferred by the charter and the amendments to the

charter of the company; and upon a sale had under such judgment, and a purchase at such sale by trustees, on behalf of the parties to such agreement, appointed by the agreement, all the property so bound by the judgment, including said franchises, shall vest in such trustees; but every such agreement shall provide that the unsecured debts of the company, incurred for repairs or running expenses, shall be paid in money, or bonds of the reorganized company of the highest class issued, as hereinafter provided; and a copy of the agreement shall be filed in such court, before the rendition of the judgment. 58 v. 70, § 1; S. & S. 127.

§ 3394. Meeting of creditors, and proceedings thereat—

The trustee shall, as soon as practicable after the sale, call a meeting of the parties to the agreement, by a notice signed by a majority of the trustees, or of their survivors, and published not less than once a week, for four consecutive weeks, in a newspaper printed in the cities of New York and Philadelphia, and in a newspaper printed in each county on the line of the railroad, specifying the day, place, and object of such meeting—the place to be on the line of the road; at such meeting each of the parties to the agreement shall be entitled to vote according to the provisions thereof, but not exceeding one vote for every fifty dollars of the par value of the debt or stock of such party, according to a list of voters and of their respective interests, which shall be prepared by a majority of the trustees, who are empowered to act as judges of the election; such meeting, by a majority in interest of the persons present, in person or by proxy, shall be competent to retain or change the name of the company, to decide, for the time being, the amount of its capital, and the number of shares into which such capital shall be divided, to fix the number of directors and their term of office, to elect such directors, a majority of whom shall be residents of the state or states in which such railroad is situate, and to do all things necessary or proper to reorganize the company; but any creditor shall be entitled to become a party to the agreement aforesaid, either at or any time before the meeting in this section provided for, and any stockholder shall be entitled to become a party to such agreement at any time within one year after such meeting. 58 v. 70, § 2; S. & S. 127.

When a railroad company reorganizes under the act of April 11, 1861 (58 v. 70), and in the agreement therefor it is stipulated that certain bonds of the original corporation shall be assumed by the new company, and the holders thereof entitled to vote at all meetings of stockholders, upon conditions specified, which are performed, the new company becomes liable to pay the bonds, and the holders thereof entitled to vote, without further action on the part of the new company. *State v. McDaniel*, 22 Ohio St. 354.

§ 3395. What must be certified to secretary of state—

A certificate, under the common seal of the company, specifying its name, and the railroad which it is to hold, maintain, and operate, shall be filed in the office of the secretary of state; and a copy of such certificate, duly certified, shall, in all courts and places, be evidence of a compliance with all the conditions and provisions of the two preceding sections, and of the due reorganization and existence of the company. 58 v. 70, § 3; S. & S. 128.

§ 3396. The property and powers of the new company—

Upon such reorganization, and a conveyance by the trustees, or of such of them as shall be vested with the legal title, or their survivors, all the railroad and other property and franchises and things purchased as aforesaid, and all the franchises, powers, faculties, privileges, and immunities which were possessed or enjoyed by the original company, or by any company with which it had been consolidated, shall pass to and be vested in the company as reorganized; and the same, and all property and things which the reorganized company shall thereafter acquire, except as hereinafter provided, shall be taken, held, and disposed of for the use and benefit of the creditors and stockholders of the company, who shall have become such upon and after such reorganization, according to their respective rights, but subject to the powers of the company, and shall be in no wise chargeable in respect to any debt, liability, or claim of any creditor or stockholder which subsisted prior to the sale and reorganization herein provided for; but all property of the original company not embraced in the sale shall, upon the reorganization, be vested in the company as reorganized, in trust for all parties interested therein as creditors, stockholders, or otherwise. 58 v. 70, § 4; S. & S. 128.

§ 3397. Further powers of the new company—

Such company shall likewise have power, at any time within six months after the organization, to assume such debts or liabilities of the original company, and to make such adjustments or exchanges with any bondholder of the original company, and, within one year, with any stockholder, as it may deem expedient, and may use for such purpose any bonds or stock which it may be authorized to issue or create; and it may make and issue such bonds, payable at such times and places, and bearing such rates of interest, not exceeding six per centum per annum, as it may deem expedient, and may secure the payment of any bonds which it may issue or assume to pay by mortgages or deeds of trust of its railroad, or any other of its property, real or personal, and may include therein with its road all its cars and other rolling stock and equipments, and any machinery, tools, implements, fuel, materials, and all other things then held or thereafter acquired for constructing, operating, or repairing the road, or for repairing or replacing any of its equipments or appurtenances, as part and parcel of the road, and as constituting with the road one property; and may include in such mortgages or deeds of trust all franchises held by the company, and connected with or related to the road, and all other corporate franchises of the company, all of which franchises, including the franchise to be a corporation, in case of sale by virtue of any such mortgage or deed of trust, or of any judgment specified in the next section, are hereby declared to pass to the purchasers, so as to enable them to reorganize the company in the manner hereinbefore provided; and such company may issue capital stock to such aggregate amount as it may deem proper, not exceeding any limit which may be fixed by agreement with the trustees purchasing as aforesaid, and may establish preferences in respect to dividends, in favor of any class of the stock, in such order and manner as it may deem expedient, not exceeding such limit as may be fixed by agreement as aforesaid; and may, if authorized by the agreement, confer on holders of any bonds which it may issue or assume to pay, such rights to vote at all meetings of stockholders, not exceeding one vote for every fifty dollars of the par amount of the bonds, as may have been provided for in the agreement, which rights, when once fixed, shall attach to and pass with such bonds, under such regulations as the by-laws may pre-

scribe, to the successive bidders thereof, but shall not subject the holder to any assessment by the company, or to any liability for its debts, or entitle any holder to dividends. 58 v. 70, § 5; S. & S. 128.

§ 3397a. When and how stock with restrictions may be issued—

In all cases of railroad companies heretofore or hereafter organized or reorganized under the laws of Ohio, wherein the organization or reorganization agreement provides and stipulates that any class of creditors, bondholders or stockholders of the original company, shall in anywise be restricted or limited, in participation in profits or dividends, or in respect to liens or the right to vote as the holders of stock or securities in said reorganized company, the said reorganized company, its directors and officers, shall issue the certificates of stock or securities into which the original stock, securities or debt may be convertible, bearing upon the face of each, plainly and distinctly set forth, such restrictions or limitations, so that purchasers may be advised of the terms thereof; and all holders of stock or securities, created under such reorganization agreements, shall hereafter have only such restricted or limited rights, liens, participation in profits, dividends and right to vote thereon, as may be in such agreements, certificate of stock or securities provided and set forth. 84 O. L. 142.

§ 3398. Lien of mortgages, etc.—

The lien of the mortgages and deeds of trust authorized to be made by the preceding section shall be postponed to the lien of judgments recovered against the company, after its reorganization, for labor thereafter performed for it, or for materials or supplies thereafter furnished to it, or for damages, losses or injuries thereafter suffered or sustained by the misconduct of its agents, or in any action founded on its contracts or liability as a common carrier thereafter made or incurred. 58 v. 70, § 6; S. & S. 129.

§ 3398a. Lien for labor performed for railroad company—

That in all actions now pending or hereafter commenced in any of the courts of this state, either as original actions, or as proceedings in error against any railroad corporation now exist-

ing or hereafter created, or any foreign railroad company operating and carrying on business in this state, when such action is for the purpose of recovering judgment against said corporation, for labor performed for it, or for materials or supplies furnished to it, or for damages or losses, or injuries suffered or sustained by the misconduct of its agents, or in any action founded on its contracts or liabilities as a common carrier made or incurred, which action, by virtue of statutory enactment, or upon principles of equity, would, when reduced to judgment, become a lien upon the property of such corporation prior in law or equity to the lien of any mortgage or deed of trust authorized to be made by any of the statutes of this state, shall be and remain a prior lien upon such railroad property, notwithstanding any sale or conveyance of such property by virtue of any judgment or decree of foreclosure founded upon a breach of the terms and conditions of any such mortgage or deed of trust. 79 O. L. 11.

§ 3398b. How lien enforced—

That the party prosecuting such action in order to avail himself of the provisions of section *thirty-three hundred and ninety-eight(a)* of this act, shall, before the day fixed for the sale of the property of any such railroad under any judgment or decree of foreclosure and sale, file with the clerk of the court wherein such judgment or decree of foreclosure and sale was rendered, a notice in writing, setting forth the title of his action, the court wherein pending, the amount of his claim, the date from which he claims interest thereon, the probable amount of cost, and that he claims that the judgment by him sought to be recovered would, when obtained, become a lien prior in law or equity to the lien of the judgment or decree of foreclosure and sale. That he shall also before the day of sale, or at the time thereof, serve a certified copy of such notice upon the officer or other person making such sale, who shall, before offering said property for sale, read such notice publicly at the time and place of sale, and shall, with his return of such sale, return such certified copy of notice with the indorsement of his proceedings thereunder upon the same to the court. 79 O. L. 11.

§ 3398c. In case of sale, court to retain the amount of lien—

That the court, on the return of the officer or other person

making such sale, before confirming the same and ordering distribution of the funds arising therefrom, shall retain in its custody or under its control a sufficiency of such proceeds applicable to distribution to the claimants under the liens of the mortgage or deed of trust to satisfy any judgment which may be recovered in the action, provided for in section 3398a of this act, when ended and determined. 79 O. L. 11.

§ 3398d. Proceedings to determine priorities—

That within sixty days after the determination of the action referred to in section 3398a, the party claiming such priority of lien, if he shall have recovered judgment against said railroad company, shall file his answer and cross-petition in the action pending in the court holding the fund as provided in section 3398a, setting forth his legal and equitable claim thereto, and such court shall make the proper orders necessary to the determination of the questions of priorities and distribution of the retained fund, as in section 3398c provided. 79 O. L. 11.

3399. These provisions applicable to certain other companies—

The provisions of the seven preceding and the next succeeding sections shall extend and apply to companies whose railroads are partly within and partly without this state; a company of this state, possessing such a railroad, shall have capacity to exercise without this state all its powers, privileges, faculties and franchises; a corporation of another state possessing a railroad which is partly in such other state and partly within this state, may exercise and enjoy within this state all its powers, privileges, faculties and franchises, for the purpose of such railroad and its business, not inconsistent with the laws of this state; and all mortgages and deeds of trust made by such corporation upon its railroad, equipments, or other property within this state, shall operate in the same manner and with the like effect as hereinbefore provided with respect to companies so reorganized; but such part of the railroad as is within this state shall be subject to taxation, and to all regulations of law, in the same manner as railroads of this state in like cases, and the corporation owning the same shall be subject to all duties in respect thereto imposed by law, and may sue and be sued in all cases and in the same

manner as a company of this state might sue or be sued. 58 v. 70, § 7; S. & S. 129.

§ 3400. The property mortgaged may be sold without appraisal—

Railroads, and other property mortgaged therewith by such company, may, if the court deems it expedient, be sold without appraisal, at judicial sales under judgments upon such mortgage; but in such case, in order to prevent sacrifices, and protect the interests of all concerned, the court shall fix a minimum sum, below which no sale shall be made; and, in order to fix that amount, the court may, if it deems it expedient to do so, refer the subject to a master, with instructions to take testimony, and report the sum. 58 v. 70, § 8; S. & S. 130.

§ 3401. When creditors of companies may agree on capitalization—

When judicial proceedings are pending in any court sitting in this state, for the sale of any railroad, and the same is in the hands of a receiver appointed by such court, two-thirds in interest of each class of mortgagees, or holders of the bonds issued under a mortgage, and two-thirds in interest of all other classes of creditors of such company, and the owners of two-thirds of the shares of the stock thereof, may agree in writing upon a plan for the adjustment of such indebtedness, by capitalization or otherwise. 60 v. 55, § 1; S. & S. 126.

This section is invalid, as impairing the obligations of contracts, as to certain creditors. *Mather v. Cin. Ry. Tunnel Co.*, 3 C. C. 284.

§ 3402. Secretary of state to publish notice of the agreement—

When such agreement is made, and filed in the office of the secretary of state, he shall cause public notice thereof to be given in a newspaper of general circulation published in each of the cities of Columbus, Cincinnati, and Cleveland, and also in a newspaper of general circulation published in each of the counties through or in which the road is located, which publication shall be made immediately after the agreement is filed, and be continued for six consecutive weeks, and the cost thereof shall be paid by the company. 60 v. 55, § 2; S. & S. 126.

§ 3403. Other creditors may sign the agreement—

A duplicate of the agreement shall be kept at the principal office of the company; and all persons in interest, not parties thereto, shall be at liberty, for the period of four months from and after the date of the first publication, to appear and become a party to such agreement, either in person or by proxy, by signing the same, and thereby secure the benefits thereof. 60 v. 55, § 3; S. & S. 126.

§ 3404. Rights of those who do not sign—

All persons in interest who fail to become parties to the agreement within the time aforesaid shall thereafter be entitled to the same rights, interest, and estate, remedy, liens, and action, and none other, which parties in interest of like class and amount who signed the agreement obtained by, through, and under the agreement; but if any person in interest neglect and fail for the period of six years after the publication of the notice mentioned in section *three thousand four hundred and two*, to apply to the principal office of the company, either in person or by proxy, to become a party in interest in the agreement, such person, unless an infant, a married woman, or insane, shall be barred of all interest, claim, right, or action under the agreement, or otherwise; and in case of such disability the rights above enumerated shall be extended for the period of two years after the termination of the disability. 60 v. 55, § 4; S. & S. 126.

§ 3405. When the court to make order touching costs—

When the agreement is made, filed, and notice thereof given, and proof thereof made, or offered to be made, in the court in which the proceedings are pending, the court shall dismiss the proceedings; but the court may make such order or decree touching the costs and expenses thereof as it may deem just and proper. 60 v. 55, § 5; S. & S. 126.

§ 3406. Agreement may be between each interest and the company—

The agreement shall not be required to be between the several interests hereinbefore specified, but may be between each interest separately, and the railroad company. 60 v. 55, § 7; S. & S. 127.

§ 3407. When the road is used by two companies—

If the railroad involved in such judicial proceedings is used, in whole or in part, by such company in common with any other railroad company, on the same track, between any points on the line common to both, and within the limits of the termini established by the charters of both companies, the company owning the railroad, if the same can be done without impairing the usefulness thereof to it, may lease for a period of years, for an annual rent, or sell for a fixed sum to the company to which the line of road, in whole or in part is common, an undivided interest in the same, upon such terms and conditions as may be agreed upon; and such lease or sale shall be reported to and approved by the court, and when so made and approved, the lessee or vendee thereof shall hold the same free from any previous lien which had been put thereon. 60 v. 55, § 8; S. & S. 127.

Partition can not be had between railroad companies holding road in common. R. R. Co. v. R. R. Co., 38 Ohio St. 614. But see sec. 3392-*f*.

§ 3408. When stock or bonds are held in a fiduciary capacity—

When any portion of the stock or bonds of a company is held by the state, or a county, township, city, village, or other municipal corporation, or by an executor, administrator, or a guardian, or otherwise in a fiduciary capacity, the governor, county commissioners, township trustees, council, or other authority of the municipal corporation, or person holding in a fiduciary capacity, may become parties to any agreement for the reorganization of such company, and may control, exchange, or manage such stock or bonds according to the terms of the agreement, and take and receive new stock or bonds, to be issued in lieu of the original stock or bonds, which shall be held on the same terms, and subject to all liens, which attached to the original stock or bonds. 58 v. 70, § 9; 60 v. 55, § 6; S. & S. 126, 130.

PRIVATE SALES OF ROADS.**§ 3409. When a company may sell its road-bed, etc.—**

A company owning in whole or in part any road-bed and right of way for a railroad within this state, including those acquired by purchase at judicial sale, which, from lack of means or other cause, is unable to complete the construction of its proposed

line of road thereon, may sell, assign, and transfer the same, or any part thereof, to any other company incorporated under the laws of this state, with authority to construct and operate a railroad over the same route, or any part thereof, which transfer shall include all work done upon such line of road, together with all material furnished therefor, not exempted by the terms of the grant, with all rights, privileges, and easements, as fully as the same are or may be possessed by the company making the same, and shall, to the same extent, vest the title of and the right to enjoy the same in such grantee. 65 v. 142, § 1; 66 v. 334, §§ 1, 2; S. & S. 133.

This section does not authorize the sale and transfer of a subscription which was conditional upon the completion of the road sold, and the subscription does not become absolute by performance of the condition by the purchasing company. *R. R. Co. v. Hinsdale*, 45 Ohio St. 556.

But the sale or abandonment of the railroad is no defense to an action on a subscription unless it is made a condition of the subscription. *Armstrong v. Karshner*, 47 Ohio St. 276.

§ 3410. The transfer to be by deed—

Such transfer shall be by deed, duly executed by the president of the company grantor, in the manner provided by law for the conveyance of real estate, and shall be for such consideration as the parties may agree upon. 65 v. 142, § 2; S. & S. 133.

§ 3411. Two-thirds in interest of stockholders must consent—

Before any such transfer shall be made, the president of the company shall call a meeting of the stockholders of the company, at some convenient point on the line, or at a terminus of the road, of which he shall cause at least thirty days' notice to be published in some newspaper printed or in general circulation in each county in which such road-bed and right of way are situate; such meeting may, by a concurrent vote of two-thirds in interest of the stock represented thereat, by the owners thereof in person, or by proxy, declare by resolution the inability of such company to complete its line of road, prescribe the terms of the proposed transfer of its road-bed and right of way, and direct the president of the company to execute the deed; and all such proceedings, resolutions, and directions shall be duly recorded in the proper record book of the company, and a copy thereof delivered to the

grantee, and they shall also be recited in the deed. 65 v. 142, § 3; S. & S. 133.

§ 3412. What interest dissenting stockholder may retain—

No transfer shall be made against the dissent of any stockholder, expressly declared and filed in writing at such meeting, without the guaranty of the company grantee that it will cause to be issued to him certificates of its capital stock, equal in amount to his pro rata interest as a stockholder of the grantor, in the amount for which the property is sold. 65 v. 142, § 3; S. & S. 133.

§ 3413. Title to property vests in grantee—

The title to the property so transferred, together with the right to use, occupy, and enjoy the property for any and all purposes proper for the construction, maintenance, and operation of a railroad thereon, shall pass to and vest in the company grantee, by the execution of the deed, to the same extent as the granting company might or could use, occupy, and enjoy the same. 65 v. 142, § 5; 70 v. 245, § 1; S. & S. 133.

§ 3414. Certain rights of way forfeited—

Where, upon an unfinished road, a right of way, or any part thereof, remains for ten years unused for railroad purposes, it shall be held forfeited, and shall revert to the owner of the land, unless at least twenty miles of the road have been completed by the company during that period, or unless an average of one thousand dollars per mile has been expended for construction before the expiration of said period of ten years. 93 v. 414.

RECEIVERS.

§ 3415. May sue and be sued without leave of court—

When a line of railroad, the whole or any part of which lies within the limits of this state, has been placed, by order of court, in the hands of a receiver, who has taken charge of and is operating the same for the purpose of carrying passengers and freight, and doing such other things as ordinarily belong to the running and management of railroads, such receiver may, in his official capacity, sue or be sued in the courts of this state without leave

previously granted: provided, however, that no person shall act as such receiver unless he is a resident citizen of this state. 69 v. 31, § 1.

A receiver of a railroad, operating the road under the order of the court, in the manner it might be done by the railroad company, and having the exclusive control of the road, and his agents and employes in the business, may be made answerable in his official capacity, to his employes and others, for injuries sustained through the negligent discharge of his duties by himself or agents, where the railroad company, if it were operating the road, would have been liable. *Meara v. Receivers*, 20 Ohio St. 137. In such case the lessor company, and the lessee company for whom the receiver was appointed, are not liable. *Caldwell v. R. R. Co.'s*, 33 B. 134.

Service cannot be made upon the agent employed by a receiver in an action against the railroad company itself. *R. R. Co. v. Orme*, 1 C. C. 511.

Receiver is not bound by notice of ditch proceedings served upon local agent of railroad company. *Caldwell, Receiver, v. Trustees*, 2 C. C. 10.

This section does not authorize levy upon or sale of property in possession of receiver, without leave of the court appointing the receiver. *Croy, Adm'r. v. Marshall, Receiver*, 3 C. C. 489.

§ 3416. Where action may be brought and service—

Actions may be brought against the receiver of a railroad in any county through or into which the road is constructed, and service of summons may be had upon the receiver, or upon the superintendent of the road, or upon any ticket or freight agent who is in the employment of or acting for the receiver; but no service made upon the ticket or freight agent shall be valid unless the office or place of business of such agent is in the county where suit is brought. 69 v. 31, § 2.

§ 3417. Application of funds, and lien thereon—

The earnings of a railroad in the hands of a receiver, and all other money which comes into his hands as such receiver, shall be applied first to pay costs and expenses of the suit in which he was appointed, and the expenses of operating and managing the road, including all materials and supplies procured by him therefor, and liabilities incurred by him in such operation and management; and all judgments recovered against the receiver of a railroad for injuries to person or property, or for wages for employes, or work done or materials furnished while he is operating or managing the road, shall be a lien on the funds in his hands as

receiver, but shall affect him only in his trust capacity, and not individually. 69 v. 31, § 3.

Satisfaction of a judgment rendered against a receiver can be obtained only out of funds in his hands, as may be directed by the court appointing him. *Meara v. Receiver, supra.*

§ 3418. Where receiver must deposit money—

When the line of a railroad operated by a receiver lies wholly within this state, all money which comes into the hands of the receiver, whether arising from operating the road or otherwise, shall be kept and deposited in such place within this state as the court may direct, until properly disbursed; but if any portion of the road lies in another state, the receiver shall be required to deposit in this state at least such share of the funds in his hands as is proportioned to the value of the property of the company within this state. 69 v. 31, § 4.

JUDICIAL SALES OF ROADS.

§ 3419. How purchaser of railroad may acquire franchise—

The purchaser of a railroad, situated wholly or partly within this state, which has been or may hereafter be sold pursuant to judicial proceedings, may acquire the franchise to be a corporation originally vested in the company which held the road prior to such sale, by grant of such company, under such terms and conditions as may be agreed upon by the directors of the company, with the consent of the stockholders owning two-thirds of the stock; which grant shall be in the same form as is required by law to convey real estate, and shall pass such franchise to the persons or company becoming the owner, by purchase as aforesaid, of such railroad; but no such grant shall be made unless provision be made for granting to the stockholders in the original company, stock in the reorganized company, upon equal terms with the stockholders thereof, and as shall be acceptable to the directors making such grant. 62 v. 169, § 1; S. & S. 125.

See *Hatry v. P. & Y. Ry. Co.*, 1 Cir. Ct. Rep. 426, and note under section 3384.

§ 3420. Certain roads may be sold at judicial sale—

The real and personal property, road-bed, right of way, fixtures, and franchises of a company in this state which has not

completed, nor conveyed by deed of trust, or mortgage, any part of its road, and which is insolvent, and whose property is in the hands of a receiver appointed by a court of competent jurisdiction, may be sold at judicial sale; and the title thereto, with all the rights, liberties, faculties, and franchises, shall pass by such sale, and vest in the purchaser thereof, as fully as the same had been possessed, exercised, and enjoyed by such company. 65 v. 192, § 1; S. & S. 131.

The title of a purchaser at a judicial sale, as a general rule, cannot be impeached in equity for errors or irregularities in the proceedings. *Stiles v. Wiedner*, 35 Ohio St. 555.

§ 3421. The receiver must petition therefor—

Before any such sale shall be ordered, the receiver shall file in such court his petition therefor, in which he shall set forth the names of the creditors of the company, with the sums due to each, as nearly as can be ascertained, a statement of its assets; exclusive of its road-bed, rights of way, and franchises, and a pertinent description, in general terms, of the road-bed, right of way, and property so sought to be sold, and shall cause notice thereof to be published, for six consecutive weeks, in some newspaper printed and of general circulation in each of the counties in which any part of the road-bed is situate; and any creditor shall, at any time before the distribution of the proceeds of the sale, have the right to appear and set up his claim by answer, and have it determined by the court, if it is omitted from or inaccurately stated in the petition. 65 v. 192, § 2; S. & S. 131.

§ 3422. Order for appraisement of road—

The court, on proof of the publication of such notice, and on being satisfied that a sale is necessary for the payment of the indebtedness of the company, shall order the sale of such road, road-bed, rights of way, property, and franchises, upon such terms of payment as the court may deem proper, and shall issue its order to the receiver, commanding him that he cause the same to be appraised by commissioners, to be selected by the court, skilled in the construction and value of such road-beds as they may be called upon to appraise, having the qualifications of a freeholder, not less than three in number, and consisting of at least one from each county in which any part of the road-bed is situate; and such proceedings shall be had under such order as

are provided by law in case of sales of real estate made by order of court in other cases, so far as the same may be applicable. 65 v. 192, § 3; S. & S. 132.

§ 3423. Notice of sale to be published—

Before any such sale shall be made, notice thereof shall be given by publication, for six consecutive weeks, in some newspaper published and of general circulation in each of the counties through or in which such road is located, and also in some newspaper published and of general circulation in each of the cities of New York and Cincinnati, for at least thirty days prior to the day of sale; but the sale shall not be made for less than two-thirds of the appraised value of the property and rights, unless, upon the same having been twice offered and not sold, the court, in its discretion, order a reappraisement. 65 v. 192, § 4; S. & S. 132.

§ 3424. Confirmation of sale, and deed—

When a sale is made, and reported to the court, if the court is satisfied that the same was fairly and properly conducted, in all respects, according to law and the order of the court, it shall cause the sale to be confirmed, and shall order the receiver to execute and deliver to the purchaser a deed of conveyance for the road, road-bed, rights of way, real estate, fixtures and franchises so sold. 65 v. 192, § 5; S. & S. 132.

§ 3425. How proceeds of sale distributed—

The proceeds of the sale, after paying the costs and expenses thereof, and the unpaid expenses of the trust against the company, shall be distributed pro rata among all the creditors of the company. 65 v. 192, § 6; S. & S. 132.

§ 3426. Who may purchase such property—

A company organized under the laws of this state may become the purchaser of such property; and any number of persons, not less than five, may become the purchasers of such road, road-bed, rights of way, property and franchises, at such sale, and, upon filing a transcript of the decree of confirmation in the office of the secretary of state, shall become a corporation of this state, amenable to its process, and with perpetual succession, by such name as they may assume to themselves, subject to the laws of

this state regulating corporations, and shall hold the property, rights and franchises so purchased, free and discharged from all liability for the debts of the original corporation. 65 v. 192, § 7; S. & S. 132.

§ 3426a. Purchaser of railroad at judicial sale may sell same—Grant to be recorded—

The purchaser or purchasers of the real and personal property, road-beds, rights of way, fixtures and franchises of any railroad company in the State of Ohio, and situated wholly or in part in this state, that have been or shall hereafter be sold pursuant to judicial order, judgment or decree, and which sale has been confirmed by the court making the order of sale, may sell the same, or any portion thereof; and the title thereto, with all the rights, liberties, faculties and franchises, shall pass by such sale and vest in the purchaser or purchasers thereof, as fully as [if] the same had been possessed, exercised and enjoyed by such railroad company, and which passed by said judicial sale; which grant being in the same form as by law required to pass said real estate, shall be recorded in the record of deeds of the county or counties in which said real or personal property is situated, and said rights and franchises are or may be exercised. 77 O. L. 60.

§ 3426b. Railroad company, and any number of persons, may become purchasers—Purchasers may be incorporated—Stock and bonds may be issued as purchase price, etc.—

That any railroad company organized or existing under the laws of this state may become the purchasers of such property, as provided in the first section (3426a) of this act, and any number of persons may become the purchasers of such road, road-beds, rights of way, property and franchises, as provided herein, either directly at such judicial sale or by grant from the purchasers at such sale, whether the same shall have been heretofore or may hereafter be made; and upon filing a copy of said deed or grant in the office of the secretary of state with articles of incorporation executed in accordance with sections *thirty-two hundred and thirty-six* and *thirty-two hundred and thirty-seven* of the Revised Statutes of Ohio, they and such persons as they may associate with them, not less than five in number, shall become a

corporation, with perpetual succession, by such name as they may assume to themselves, with full capacity to maintain and operate such railroads, whether located wholly within this state, or partly within this state and partly within another state or states, and with authority to provide for the purchase price of the railroad and other property so purchased, by the issue of its capital stock, preferred or common, and bonds secured by mortgage or otherwise, bearing interest at a rate not exceeding seven per cent per annum, and stock and bonds heretofore or hereafter issued as such purchase price, in whatever amounts the incorporators, in good faith, may have agreed on, shall be valid and taken as fully paid for by the transfer to such corporation of such railroad and property, and also by such issue of stock or bonds, to raise the necessary means suitable to improve such railroad property and equipment for the uses and purposes for which it is employed; and in the operation and maintenance of such railroad, the said corporation shall be entitled to all the rights, and be subject to all the obligations and restrictions imposed upon railroad companies by the general laws of this state. 87 O. L. 270.

RAILROAD POLICE.

§ 3427. Appointment of railroad police; qualifications, etc.—

The governor, upon the application of a company owning or using any railroad in this state, shall appoint and commission such persons as the company may designate, or as many thereof as he may deem proper, to act as policemen for and upon the premises of such railroad, or elsewhere when directly in the discharge of their duties for such railroad; and all policemen so appointed shall be citizens of the State of Ohio, and men of good character; and said policemen shall hold their offices for three years, unless their commissions be revoked by the governor for cause shown, or by the railroad company as provided by section *thirty-four hundred and thirty-two* of the Revised Statutes, and all commissions heretofore issued by the governor of this state, under and by virtue of section *thirty-four hundred and twenty-seven* of the Revised Statutes of Ohio, as passed March 8, 1867, shall expire, and the authority under and by virtue of the same

shall be revoked on and after the first day of June, 1885. 82 O. L. 51.

See first note under section 3333.

§ 3428. Oath ; record of commission ; powers, etc.—

Each policeman so appointed shall, before entering upon the duties of his office, take and subscribe an oath of office, which shall be indorsed upon his commission; a certified copy of such commission, with the oath, shall be recorded in the office of the clerk of the court of common pleas in every county through or into which the railroad for which such policeman is appointed runs, and for which it is intended he shall act; and policemen so appointed and commissioned shall severally possess and exercise all the powers, and be subject to all the liabilities of policemen of cities of the first class, in the several counties in which they are authorized to act while in the discharge of their duties for which they are appointed. 82 O. L. 51.

§ 3429. Power of such police to enforce regulations of road and make arrests—

A company which avails itself of the provisions of the two preceding sections may make needful regulations to promote the public convenience and safety in and about its depots, stations, and grounds, not inconsistent with the laws of the state, and cause the same to be printed, and posted conspicuously upon its depots or station buildings, and such policemen may enforce and compel obedience to the same; and the keeper of jails, lock-ups, or station-houses in any of such counties shall receive all persons arrested by such policemen, for the commission of any offense against such regulations or the laws of the state, upon or along the railroad or premises of any such company, to be dealt with according to law. 64 v. 60, § 3; S. & S. 121.

§ 3430. Policemen to wear badges—

Each policeman so appointed and commissioned shall wear in plain view, when on duty, as heretofore specified, a metallic shield with the word "Police," and the name of the railroad for which he is appointed inscribed thereon, except while acting as detective in the discharge of his duties for such railroad. 82 O. L. 51.

§ 3431. Compensation of police—

The compensation of such policemen shall be paid by the company for which they are respectively appointed, and at such rates as may be agreed upon by the parties. 64 v. 60, § 5; S. & S. 121.

§ 3432. When powers cease—

When a company no longer requires the services of a policeman so appointed, it may file a notice to that effect, under its corporate seal, attested by its secretary, in the several offices where the commission of such policeman is recorded, which shall be noted by the clerk upon the margin of the record where the commission is recorded, and thereupon the power of such policeman shall cease and determine. 64 v. 66, § 6; S. & S. 121.

§ 3433. When a passenger conductor is a policeman—

The conductor of every train carrying passengers within this state is hereby invested with all the powers, duties and responsibilities of police officers, while on duty on his train. 73 v. 166, § 1.

§ 3434. When a conductor may eject a passenger—

When a passenger is guilty of disorderly conduct, or uses any obscene language, or plays any game of cards or chance for money, or any other thing of value, upon any passenger train, the conductor of such train shall stop his train at the place where such offense is committed, or at the next stopping place of such train, and eject such passenger from the train, using only such force as may be necessary to accomplish such removal; and the conductor may command the assistance of the employes of the company and of the passengers on such train to assist in such removal; but before doing so he shall tender to such passenger such proportion of the fare he paid as the distance he then is from the place to which he has paid fare bears to the whole distance for which his fare is paid. 73 v. 166, § 2.

§ 3435. When he may arrest a passenger—

When a passenger is guilty of any offense upon a passenger train, the conductor of such train may arrest him and take him before any magistrate having cognizance of such offense, in any

county in this state in which such train runs, and file an affidavit before such magistrate charging him with such offense; but in no case shall the liability of a railroad company, for damages caused by the conduct of its conductor, be affected by the provisions of this and the next preceding section. 73 v. 166, § 3.

§ 3436. Penalties against conductors for violations of certain sections—

A conductor having charge of a passenger train within this state, who willfully neglects his duty as required by the two preceding sections, or fails to use all the means in his power to carry out the requirements of such sections, shall be deemed guilty of negligence of official duty, and on conviction thereof, before any court having competent jurisdiction, shall be fined not less than five nor more than twenty-five dollars. 73 v. 166, § 4.

An act to provide suitable waiting-rooms at railroad stations.

SEC. 1. That every person, firm or corporation operating a steam railroad wholly, or in part, within the State of Ohio, be required to provide a suitable waiting room at each station where passenger trains or any of them, of such road, are regularly scheduled to stop, for the use of the traveling public. Said waiting rooms to be maintained and kept as to be conducive to the health and comfort of the patrons of such railroad. 94 O. L. 231.

SEC. 2. Upon the written complaint of ten or more citizens of the State of Ohio being filed with the said commissioner that any of the provisions of this act are being violated, at such station, the said commissioner shall forthwith make investigation of the same; and if upon such investigation it be found that such violation exists, he shall issue an order to the person, firm or corporation guilty of such violation, setting forth the nature of the improvement required and directing that the same be completed within a time to be specified therein. 94 O. L. 231.

SEC. 3. Any person, firm or corporation failing to comply with an order of said commissioner, or any of the provisions of this act, shall, upon conviction therefor before a court of common pleas of the county in which such violation shall occur, forfeit and pay any sum not less than one hundred dollars. Such forfeiture or penalty to be recovered in a civil action in the name of the State of Ohio, for the benefit of the county in

which such failure or violation shall occur; such action to be brought by the prosecuting attorney of the county in which the violation of this act occurs, at the instance of the commissioner of railroads and telegraphs, as provided in other cases for the recovery of penalties and forfeitures against railroad companies. Said prosecuting attorney shall receive for his services ten per cent of all fines and costs recovered under the provisions of this act. 94 O. L. 231.

STREET RAILWAYS.

SECTION	SECTION
2501. Construction not to be begun till permission secured.	3442. Form of oath in appropriation proceedings.
2502. Proceedings necessary to procure permission.	3443. Control of railroads by council or commissioners.
2502a. Release from obligations of grant.	3443a. Watchmen at crossings, etc.
2503. Council shall first provide for grade of street.	3443-1. Act for relief in certain cases.
2504. Council may control kind of pavement to be laid.	3443-2. Extension of tracks—fare.
2505. When tracks may be extended; fare not to be increased thereby.	3443-3. Vestibules for motormen.
2505a. Lease or purchase of other roads, etc.	3443-4. Penalty.
2505b. Consolidation of lines.	3443-5. Intersecting street railroads.
2505c. Use of tracks.	3443-6. Cars to stop at intersections.
2505e. Additional powers of company.	3443-7. Penalties.
3437. Where street railways may be constructed.	3443-8. Street railroads outside of municipalities.
3438. Who may grant authority to construct same—conditions governing extensions.	3443-9. Powers of such companies.
3439. When written consent of owners necessary.	3443-10. May appropriate real estate.
3440. Appropriation for right of way.	3443-11. Power as to leases and traffic arrangements.
3441. Authority controlling public road must consent.	3443-12. Consolidation.
	3443-13. Regulations and powers.
	<i>Inclined Plane Railways.</i>
	3444. Powers.
	3445. How street crossings to be made.

§ 2501. Application and grant prior to construction; renewal of grant—

No corporation, individual or individuals shall perform any work in the construction of a street railroad, until application for leave is made to the council in writing, and the council by ordinance shall have granted permission, and prescribed the terms and conditions upon, and the manner in which the road shall be constructed and operated, and the streets and alleys which shall be used and occupied therefor, but the council may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest. 92 O. L. 206.

Acceptance of ordinance fixing terms and conditions of grant constitutes a contract. *State v. Cleve. Electric Ry. Co.*, 15 C. C. 200.

The right to carry freight is included in corporate powers, and cannot be taken away by the city council. *State v. Dayton Traction Co.*, 18 C. C. 490.

This section does not authorize a city council to enact an ordinance making it an offense punishable by fine or imprisonment to run a street car without both a driver and conductor, although a contract by the street car company to obey all the ordinances is valid, and may be enforced by the methods and remedies known to the law. *Thornhill v. City of Cincinnati*, 4 C. C. 354.

Where two electric street railway companies have by ordinance been granted the right to lay tracks in the same street, a court cannot require them to use tracks in common. *Hamilton, etc., Co. v. Hamilton, etc., Transit Co.*, 5 C. C. 319.

Where the operation of an electric street railway disturbs the working of a telephone system, the rights of the former are superior, and the telephone company must readjust its methods. *Railway Co. v. Telegraph Asso.*, 48 Ohio St. 390.

Rights of street railroad company and pedestrians at crossings discussed. *Cin. St. Ry. Co. v. Snell*, 54 Ohio St. 197; *R. R. Co. v. Cavagna*, 6 C. C. 606.

A line may "fork" without becoming two routes. *Aydelott v. City of Cincinnati*, 11 C. C. 11.

Street car companies have only equal rights with citizens on foot or in vehicles. Both must use due care. A traveler crossing a track must use his senses, look and listen for approaching trains. *Weiser v. Broadway & Newburg St. Ry. Co.*, 10 C. C. 14, affirmed in 37 B. 212.

But company has right to exclusive use of that part of track necessary at the time for passage of cars. *Siek v. Consol. St. Ry. Co.*, 16 C. C. 393.

§ 2502. Proceedings to establish street railroad route— Period for which grant or renewal may be made—

Nothing mentioned in the next preceding section shall be done; no ordinance or resolution to establish or define a street railroad route shall be passed, and no action inviting proposals to construct and operate such railroad shall be taken by the council, except upon the recommendation of the board of public works in cities having such a board, and of the board of improvements in other municipalities having such a board; and no ordinance for the purpose specified in said preceding section shall be passed until public notice of the application therefor has been given by the clerk of the corporation in one or more of the daily papers, if there be such, and if not then in one or more weekly papers published in the corporation, for the period of at least three con-

secutive weeks; and no such grant as mentioned in said preceding section shall be made, except to the corporation, individual, or individuals, that will agree to carry passengers upon such proposed railroad at the lowest rates of fare, and shall have previously obtained the written consent of a majority of the property holders upon each street or part thereof, on the line of the proposed street railroad, represented by the feet front of the property abutting on the several streets along which such road is proposed to be constructed; provided, that no grant or renewal of any grant for the construction or operation of any street railroad shall be valid for a greater period than twenty-five years from the date of such grant or renewal, except in cities of the second grade of the second class, in which no grant or renewal of any grant for the construction or operation of any street railroad shall be valid for a greater period than fifty years from the date of such grant or renewal; and after such grant or renewal of a grant is made, whether by special or general ordinance, the municipal corporation shall not, during the term of such grant or renewal, release the grantee from any obligation or liability imposed by the term of such grant or renewal of a grant. 88 O. L. 389.

See *Knorr v. Miller et al.*, 25 B. 128.

The publication of notice, competition in rates and consent of property owners do not apply to a renewal of a franchise; the council may by agreement for the public welfare terminate a grant previous to its expiration and renew the franchise for any period not in excess of the limitations fixed by statute. *State v. East Cleveland R. R. Co.*, 6 C. C. 318; see also *City of Cincinnati v. Cin. Ry. Co.*, 31 B. 308 (Cin. Sup. Ct.).

Less than the whole number of joint tenants in abutting lands cannot give the consent. *Ronnebaum v. Cable Ry. Co.*, 29 B. 338 (Sup. Ct. Cin.).

Temporary interference with access cannot be complained of by abutting owner. Action to have grant declared void for want of consents can be brought only by abutting owner, and he is restricted to objections applying only to his own street and to want of consent. *Glidden v. City of Cincinnati*, 30 B. 213 (Sup. Ct. Cin.), and *Barney v. Mt. Adams, etc., Co.*, 30 B. 286 (Sup. Ct. Cin.).

Circumstances excusing notice of application and consent of property owners; see *State v. El. St. Ry. Co.*, 19 C. C. 79.

Consent must be obtained although it is intended to use track already laid; such consents need not be entered on records of the council. Where a portion of a route fails for want of consents, a new grant as to that portion may be made when the consents are obtained, without bids upon rates of fare, etc. What questions cannot be raised by abutting property owner. *Sanfleet v. City of Toledo*, 10 C. C. 460, affirmed in 35 B. 55.

A franchise can be awarded only to the lowest bidder, whose bid is accompanied by a sufficient and valid bond. Where a bid is for a person named "and associates" not named, but the bond is the sole obligation of the person named, without mentioning associates, such bond is valid and binds the bidder individually. *Compton v. Johnson*, 9 C. C. 532; see also *Gallagher v. Johnson*, 30 B. 139 (C. P.).

A bid in prescribed form is presumed to be in good faith. *Gallagher v. Johnson*, 31 B. 24 (C. P.).

Notice of preliminary ordinance is not necessary. *City of Hamilton v. St. Ry. Co.*, 5 N. P. 457 (C. P.).

§ 2502a. Release from obligations or liabilities imposed by terms of grant or renewal—Extension of rapid transit over horse power route—Validity of ordinances or resolutions improperly passed or adopted.

That the release prohibited by section *twenty-five hundred and two* of the Revised Statutes may be given or made, except as to paving or repairing streets, whenever it involves a change of motive power from animal power to cable or electric power or other means for rapid transit or an additional obligation to pave or repair and keep in repair the streets along the line of railway or portion thereof; and in every such case such release may be made on such reasonable terms, including such extension of time as now authorized by law, as may be prescribed by ordinance, and any release or change or extension of time of any grant heretofore made involving any such change of motive power or additional obligation to pave or repair and keep in repair as aforesaid, shall be as valid and binding as if such change or obligation had been made under this act, and this shall apply to actions and causes of action mentioned in section *seventy-nine* of the Revised Statutes; provided, however, there shall not be any change made in the percentage on gross earnings and car license fees that may be required to be paid on such street railway route or routes or any portions of the same or on any extension of such route or routes; and whenever any rapid transit street railway route operated by cable or electric power has been, or shall be extended over the tracks of another route belonging to the same company, corporation, individual or individuals, upon which the cars are operated by horse power, the company, corporation, individual or individuals owning and operating such horse power route shall be no longer required or allowed, except to make necessary con-

nections, to operate the same, and the right to operate horse cars over such route, or such portions of the same as a rapid transit route has been or may be extended over, shall be regarded as surrendered and abandoned by the acceptance of such extension; and provided further, that any ordinance or resolution relating to a street railroad, passed or adopted by the legislative or other municipal authorities of any municipal corporation of this state by improperly suspending the rules requiring the same to be read on three different days, or by improperly putting the same on its passage with one or more other ordinances or resolutions instead of taking a separate vote on the same, shall nevertheless be valid, and this also shall apply to actions and causes of actions named in section *seventy-nine* of the Revised Statutes. 90 O. L. 228.

§ 2503. Grade of street—

Before any street railroad shall be constructed, on any street less than sixty feet in width, with a roadway of thirty-five feet or under, the council shall provide that the crown of the street shall be made a nearly flat uniform curve, from curb to curb, without ditch gutters, and in such manner as to give all wheeled vehicles the full use of the roadway up to the face of the curb, after the plan of the streets in the cities of Philadelphia and New York. And on any street, whenever the tracks of two street railroads, or of a street railroad and a steam railroad, cross each other at a convenient grade, the crossings shall be made with crossing frogs of the most approved pattern and materials, and kept up and in repair at the joint expense of the companies owning such tracks. 78 O. L. 296.

Provision as to crossing frogs applies to all companies, whether their lines were constructed before or after passage of the act; and compliance does not absolve from subsequent compliance when crossing frogs are found of a more approved pattern or character. *Cin. St. Ry. Co. v. Cin. Ham. & D. R. R. Co.*, 32 B. 4 (Cin. Sup'r Ct.).

§ 2504. Pavement of streets where railroads are constructed—Cities second grade, first class—

The council may require any part or all of the track, between the rails of any street railroad constructed within the corporate limits, to be paved with stone, gravel, bowlders, or the Nicholson, or other wooden or asphaltic pavement, as may be deemed

proper, but without the corporate limits, paving between the rails with stone, bowlders, or the Nicholson, or other wooden or asphaltic pavement, shall not be required; provided, that in cities of the second grade of the first class the council may require of any street railway company to pave and keep in constant repair, sixteen feet for a double track or seven feet for a single track, all of which pavement shall be of the same material as the balance of the street is paved with. 87 O. L. 246.

§ 2505. Extension of track—

The council of any city or village may grant permission, by ordinance, to any corporation, individual, or company owning, or having the right to construct, any street railroad, to extend their track, subject to the provisions of sections *thirty-four hundred and thirty-seven, thirty-four hundred and thirty-eight, thirty-four hundred and thirty-nine, thirty-four hundred and forty, thirty-four hundred and forty-one, thirty-four hundred and forty-two, and thirty-four hundred and forty-three*, on any street or streets where council may deem such extension beneficial to the public; and when any such extension is made, the charge for carrying passengers on any street railroad so extended, and its connections made with any other road or roads, by consolidation under existing laws, shall not be increased by reason of such extension or consolidation. 77 O. L. 43.

An extension need not begin at one of the termini, nor run in the general direction of the original route; and powers of municipal authorities concerning extension. *City of Cin. v. Cin. St. Ry. Co.*, 31 B. 308 (Sup'r Ct. Cin.).

§ 2505a. Power to lease or purchase, to enter into beneficial arrangements, to purchase stock, etc.— Perfection of lease or purchase—Rights of dissenting stockholder—Increase of fare prohibited—

Any corporation or company organized for street railway purposes, may lease or purchase any street railroad, or street railroads, or railroad operated as a street railroad and by electric power or incline plane railroad or railroads, together with all the property, real, personal and mixed, and all the franchises, rights and privileges respecting the use and operation of such railroad or railroads, situate or existing in whole or in part within the

state, constructed and held by any other corporation or company, corporations or companies, the latter being hereby invested with corresponding power to let or sell upon such terms and conditions as may be agreed upon between the corporations or companies; and any two or more of such corporations or companies may enter into any agreement for their common benefit consistent with and calculated to promote the objects for which they were created. No such lease or purchase shall be perfected until a meeting of the stockholders of each of the companies has been called for that purpose by the directors thereof, on thirty days' notice to each stockholder, at such place, and in such manner, as is provided for annual meetings of the companies, and the holders of at least two-thirds of the stock of each company, in person or by proxy, at such meeting, or at any properly adjourned meeting, assent thereto. Provided, that any stockholder who refuses to assent to such lease or sale and signifies the same by notice in writing to the lessee or purchaser within ninety days thereafter, shall be entitled to demand and receive compensation in the manner provided for the compensation of stockholders in sections *thirty-three hundred and two*, *thirty-three hundred and three*, and *thirty-three hundred and four* of the Revised Statutes, and the said sections are adopted and made to be a part of this section. Provided, that, whenever any such lease or purchase is made as herein provided, there shall be no increase of the existing rates of fare by reason of such lease or purchase, nor shall any fare be charged upon any of the separate routes so leased or purchased in excess of the fare charged over such separate routes prior to the lease or purchase thereof, and provided that when any such lease or purchase is made as herein provided, the fare charged for one continuous route or ride in the same general direction over all such leased or purchased lines within any municipal corporation shall not exceed the maximum fare charged over any one of said lines prior to such lease or purchase. 93 v. 214.

§ 2505b. Consolidation—

Whenever the lines or authorized lines of road of any street railroad corporations or companies meet or intersect, or whenever any such line of any street railroad corporation or company, and that of any inclined plane railway or railroad company or corporation or any railroad operated by electricity or other means of

rapid transit may be conveniently connected, to be operated to mutual advantage, such corporations or companies, or any two or more of them, are hereby authorized to consolidate themselves into a single corporation; or whenever a line of road of any street railroad company or corporation organized in this state is made, or is in process of construction to the boundary line of the state, or to any point either within or without the state, such corporation or company may consolidate its capital stock with the capital stock of any corporation or company, or corporations or companies in an adjoining state, the line or lines of whose road or roads have been made or are in process of construction to the same point or points, in the same manner and with the same effect as provided for the consolidation of railroad companies in sections *thirty-three hundred and eighty-one, thirty-three hundred and eighty-two, thirty-three hundred and eighty-three, thirty-three hundred and eighty-four, thirty-three hundred and eighty-five, thirty-three hundred and eighty-six, thirty-three hundred and eighty-seven, thirty-three hundred and eighty-eight, thirty-three hundred and eighty-nine, thirty-three hundred and ninety, thirty-three hundred and ninety-one and thirty-three hundred and ninety-two* of the Revised Statutes, and any and all acts amendatory and supplementary to said sections and each of them; and the said sections, including these so amended and supplemented, are adopted and made a part of this section. 92 O. L. 277.

A corporation formed by consolidation of others holds its property acquired by such consolidation in its own right, and not in trust for the constituent companies. *Greene v. St. Ry. Co.*, 43 B. 181.

§ 2505c. Use of street railway tracks for operation of passenger cars of other railway company—Grant, franchise or right—Fare—

Whenever any railway company is incorporated and organized under the laws of this state for the purpose of building, acquiring, owning, leasing, operating and maintaining a railroad or railroads to be operated by electricity or other motive power from one municipal corporation or point in this state, to any other municipal corporation, municipal corporations, or point in this state, it shall have an authority to make an arrangement or agreement with any street railway company or companies owning or operating any street railway or railways in any such municipal corporation or corporations, and said street railway company or com-

panies shall have authority to make and enter into such arrangement or agreement with said railway company, whereby the passenger cars of such railway company may be run and propelled over and along the track or tracks of such street railway company or companies, for such compensation and upon such terms as may be agreed upon in the same manner, upon the same conditions and for the same length of time as the cars owned or operated by said street railway company or companies are operated in such municipal corporation or corporations. The said cars of said railway company shall, while they are running and being operated over and along the track or tracks of such street railway company or companies in any such municipal corporation, be entitled to all the privileges and subject to all the obligations enjoyed and imposed by and upon the cars of such street railway company or companies owning or operating its cars in any such municipal corporation, and shall be operated only by the same motive power with which the cars of such street railway company or companies are or may be operated. Such arrangement and agreement, when authorized by not less than two-thirds in amount of the stockholders of each company proposing to enter into such arrangement and agreement, ratified by a majority of the directors and executed by the proper officers thereof, shall give to such railway company full authority to operate its said cars on the tracks of said street railway company or companies in such municipal corporation or municipal corporations. Provided that it shall not be necessary for such railway company, in case it uses in any such municipal corporation or municipal corporations, only the tracks of a street railway company or companies owning or operating a street railway or railways within such municipal corporation or municipal corporations to obtain any additional grant, franchise, or right, except by said arrangement or agreement with said street railway company or companies. Provided further, that the fare charged by said railway company for transporting passengers within the municipal corporation or municipal corporations, shall not be greater than that fixed in the franchise or franchises held or owned by such street railway company or companies; and where there is a public park or cemetery on the line of such railway and within one mile of, and owned by, such municipal corporation, such company shall for such fare so transport passengers to and from said park or

cemetery the same as though either was within the limits of such corporation. 91 O. L. 379.

§ 2505d.

Repealed, 93 v. 3.

§ 2505e. Street railway company may lease or purchase property and franchises of electric light and power company—Stockholders' meeting to perfect lease or purchase—Dissenting stockholder—Powers of purchasing company—Lease or sale does not affect liability of light and power company—

Any corporation or company maintaining and operating a street railroad may lease or purchase all the property, real, personal and mixed, and all the franchises, rights and privileges of any company organized prior to the date of the enactment of this supplementary act, for the purpose of supplying electricity for power and light purposes, or which has been engaged in such business in whole or in part in any city within this state, the latter being hereby vested with corresponding power to let or sell, upon such terms and conditions as may be agreed upon between the corporation and company. No such lease or purchase shall be perfected until a meeting of the stockholders of each of the companies has been called for that purpose by the directors thereof, on thirty (30) days' notice to each stockholder at such time and place and in such manner as is provided for the annual meetings of the companies and the holders of at least two-thirds of the stock of each company in person or by proxy, at such meeting, or at any properly adjourned meeting assent thereto. Provided, that any stockholder who refuses to assent to such lease or sale and so signifies by notice in writing to the lessee or purchaser within ninety (90) days thereafter, shall be entitled to demand and receive compensation in the manner provided for the compensation of stockholders in sections *thirty-three hundred and two*, *thirty-three hundred and three*, and *thirty-three hundred and four* of the Revised Statutes, and the said sections are adopted and made a part of this section. Any such company so leasing or purchasing the property, rights and franchises of an electric light and power company shall have all the rights, power and authority that electric light and power companies now have, or

may hereafter have, by the statutes of this state, but the liability of any electric light and power company shall in no manner be affected by its lease or sale as herein provided. 93 v. 139.

§ 3437. Where street railways may be constructed—

Street railways, with single or double tracks, side-tracks, and turn-outs, may be constructed or extended within or without, or partly within and partly without, any municipal corporation or unincorporated village; and offices, depots, and other necessary buildings for such railways may also be constructed. 67 v. 10, § 1.

The abutting owner can recover no compensation for such use of the street unless he suffers special injury to himself; this applies where a company is granted a franchise for twenty-five years, for a single or double track, and first lays a single track, but afterwards, during the twenty-five years, lays a double track. *Oviatt v. Akron St. R. R. Co.*, 2 N. P. 84 (C. P.)

A city cannot grant the right to build a track through a public park donated for park purposes, where the deed of donation provides for a reversion if the land is used for other purposes. *Cleveland City Cable Ry. Co. v. Barriess*, 33 B. 314.

Street railroad imposes no additional burden on lot-owner, and he is entitled to no compensation though he own the fee to center of street, unless some substantial property right is taken. *Schaaf v. Electric Ry. Co.*, 16 C. C. 252.

Switch cannot be torn up by the city because company has made improper use of it. *Cleveland City Ry. Co. v. Cleveland*, 4 N. P. 21 (C. P.).]

Nor can laying of switch authorized by ordinance be prevented by force on ground that company has not complied with terms of franchise or that switch is unnecessary. *Akron Co. v. Bedford*, 6 N. P. 276 (N. P.).

Where no negligence of the passenger appears, and there is no explanation for the escape of the car from the track, and nothing is shown that it was unavoidable, notwithstanding a high degree of care and skill on the part of the railroad company, the jury is authorized to presume that there was some negligence on the part of the company. *Cin. St. Ry. Co. v. Kelsey*, 9 C. C. 170.

For acts to cure defects in consolidation agreements, see secs. (3382-1, 2, and 3).

Where the council has authorized a street railroad using horses to construct and operate an electric system, the company has the right to put up poles and wires which are not dangerous, but do no substantial injury to premises adjoining, nor impede access thereto, and injunction will lie against threatened removal thereof. *Mt. Adams and Eden Park Inclined Ry. Co. v. Winslow*, 3 C. C. 425.

**§ 3438. Who may grant authority to construct same—
Proviso—**

The right so to construct or extend such railway within or beyond the limits of a municipal corporation, can be granted only by the council thereof, by ordinance, and the right to construct such railway within or beyond the limits of an incorporated village can be granted only by the county commissioners, by order entered on their journal; and, after said grant or renewal of any grant shall have been made, whether by general or special ordinance, or by order of the county commissioners, neither the municipal corporation nor the county commissioners shall release the grantee from any obligations or liabilities imposed by the terms of said grant or renewal of a grant during the term for which said grant or renewal shall have been made: provided, that no authority shall be given by such municipal or county authorities to occupy the track, whether single or double, or other structure of any existing street railways, for more than one-eighth of the entire distance between the termini of the route, as actually constructed, operated, and run over, of the company or individual to whom such grant is made; except, however, in granting permission to extend existing routes in cities of the first, second, and third grade of the first class, and first grade, second class, such cities, and the companies owning such route, shall have the same rights and powers they have under the laws and contracts now existing; and that no extension of any street railroad, located wholly without any such city, or of any street railroad, wherever located, which has been or shall be built in pursuance of a right obtained from any source or authority other than a municipal corporation, shall be made within the limits of such city, except as a new route, and subject to the provisions of sections *twenty-five hundred and one* and *twenty-five hundred and two*. 80 O. L. 173.

When an injunction will be allowed against crossing or using tracks of one street railroad by another, see *Met. St. Ry. Co. v. Toledo Elec. St. Ry. Co.*, 9 C. C. 664.

An ordinance of a municipal council, authorizing an extension of a street railroad beyond the limits of the corporation and along a state road, is no defense to an action by the county commissioners to recover damages to said road occasioned by the construction of said extended line, nor are the property rights of abutting land-owners extinguished. *Citizens' Electric Ry., etc., Co. v. Board of County Commissioners*, 56 Ohio St. 1, affirming 9 C. C. 183.

The board of county commissioners is the proper source from which to obtain consent of county property; its action consenting in writing is valid, though not entered on the journal of the board; such action may be shown by parol to have been taken. *Nearing v. Tol. Elect. St. Ry. Co.*, 9 C. C. 596.

See note to sec. 3440. *St. Ry. Co. v. St. Ry. Co.*, 50 Ohio St. 603.

For irregularities in council proceedings granting authority, held not to impair the rights conferred upon the company, see *Sloane v. People's Electric Ry. Co.*, 7 C. C. 84.

Ordinance granting rights must be strictly construed against the company, and cannot authorize the erection of a permanent structure in the middle of the street. *Hamilton, etc., Transit Co. v. City of Hamilton*, 1 N. P. 366 (C. P.).

§ 3439. Written consent of owner—

No such grant shall be made until there is produced to council, or the commissioners, as the case may be, the written consent of the owners of more than one-half of the feet front of the lots and lands abutting on the street or public way, along which it is proposed to construct such railway or extension thereof; and the provisions of sections *twenty-five hundred and one* and of *twenty-five hundred and three to twenty-five hundred and five* inclusive, so far as they are applicable, shall be observed in all respects, whether the railway proposed is an extension of an old or the granting of a new route: provided, that this act shall not apply to any county containing a city of the second grade of the second class. 80 O. L. 173.

Switches cannot be extended, nor additional ones constructed, without written consent of majority of property holders, represented by feet front, and obtaining proper authority. *Harner v. Columbus St. Ry. Co.*, 29 B. 387 (C. P.).

When a city council grants permission to construct a street railroad, without the consent of the owners of property on the street in which it is about to be constructed, as required by statute, the construction of the railroad may be enjoined at the suit of such owners. *Roberts v. Easton*, 19 Ohio St. 78.

The consent of the necessary number of property owners on the street is a prerequisite to the power of council to grant permission for the construction of a street railroad therein, and the act of the council in granting such permission is not conclusive against such property owners, of the fact that the requisite majority have given their assent to such construction of the proposed road. *Ib.*; *Simmons v. City of Toledo*, 8 C. C. 535, affirmed 31 B. 367.

When a single track railroad has been carefully constructed, with the requisite consent of the property holders on the street, and it is afterward proposed to construct another track on the same street, the consent of any of

the property owners to the construction of the first track cannot be counted as an assent to the construction of the second, as against those who remonstrate against the added track. *Roberts v. Easton, supra*.

Street railroad company, with permission of city or village, may under certain restrictions, extend track beyond termini named in articles. *Sims v. St. R. R. Co., 37 Ohio St. 556*.

The right to use a street for railway purposes includes right to erect poles for support of electric wires. The consents of abutting property owners must be in writing, and may be withdrawn before the ordinance has been passed by the council. *Simmons v. City of Toledo, 8 C. C. 535, affirmed 31 B. 567*.

In the extension of a street railway over streets not occupied by any road, the consents of the owners of more than one-half of the feet front of the lots or lands abutting on each street to be occupied by such extension are requisite. *The Mt. Auburn Cable Ry. Co. v. Neare, 54 Ohio St. 153*.

§ 3440. Appropriation of property for such railways—Toledo—Cuyahoga county—

When the council or commissioners make such grant, the company or person to whom the grant is made may appropriate any property necessary therefor when the owner fails to expressly waive his claim to damages by reason of the construction and operation of the railway; and in any city of the third grade of the first class any person, persons or company which is authorized to construct and operate and has constructed and is operating a street railway, may appropriate any property necessary for the purpose of occupying and using under section 3438 any existing street railway track or tracks, subject to the limitations of said section, and for not more than one-eighth of the entire distance between the termini of the route as actually constructed, operated and run over, of the appropriating company or person at the time appropriation proceedings are begun, such appropriation to be made in the mode and manner provided for the appropriation of property in part third, title 2, chapter 8, of the Revised Statutes; and in counties containing a city of the second grade of the first class the power to appropriate may be exercised, as hereinbefore provided, for the purpose of constructing a street railway along a highway occupied by a turnpike or plank road company when the person, persons or company authorized to construct such street railway cannot agree with such turnpike or plank road company upon the terms and conditions upon which such highway may be occupied, and when such appropriation will not unnecessarily interfere with the reasonable use of such high-

way by such turnpike or plank road company; provided, nothing herein contained shall affect the rights of property owners to give or withhold their consent concerning the right of way for street railroads upon any street or road. 89 O. L. 348.

Unless stipulated in the grant to the first company, the council has no power to fix the compensation to be paid for use of tracks by a second company; such compensation must be assessed by a jury. *R. R. Co. v. R. Co.*, 36 Ohio St. 239.

A street railway company, authorized by council of a municipal corporation to occupy part of track of another company under section 3438, is authorized without the aid of the amendatory provisions of April 11, 1890, to appropriate the track according to the grant, the proceedings to be prosecuted under chapter 8, title 2, of part third, of the Revised Statutes. *St. Ry. Co. v. St. Ry. Co.*, 50 Ohio St. 603, affirming 6 C. C. 362. See also 10 C. C. 168 and 7 N. P. 211.

For numerous points concerning appropriation of right to use tracks of another company, see *Tol. Consol. St. Ry. Co. v. Tol. Elect. St. Ry. Co.*, 12 C. C. 367, affirming 6 N. P. 537, and *Tol., etc., Ry. Co. v. Toledo Traction Co.*, 15 C. C. 190 and 17 C. C. 23; *State v. El. St. Ry. Co.*, 19 C. C. 79.

§ 3441. The authority controlling the public road must consent—

If the public road along which the railway is to be constructed is owned by a person or company, or is within the control or management of the board of public works or other public officer, such person, company, or officer may agree with the person or company constructing the railway as to the terms and conditions upon which the road may be occupied. 67 v. 10, § 1.

§ 3442. Form of oath in appropriation proceedings—

In case of appropriation of property for such purpose, the oath to be administered to the jury shall be as follows: "You and each of you do solemnly swear that you will justly and impartially assess, according to your best judgment, the amount of compensation which is due to [here name the owner or owners], by reason of the appropriation of the street or avenue [as in the statement described], irrespective of any benefit from any improvement proposed by said [here name the company, individual, or company of individuals], and that you will, in assessing any damages that may accrue to [here name the owner or owners], by reason of the appropriation, other than the compensation, further ascertain how much less valuable the lot or

lots of said [here name the owner or owners], will be in consequence of such appropriation." And the jury, in ascertaining such compensation or damages, shall determine the amount thereof, without reference to the distinction between a public and a private nuisance, and the effect of such distinction upon the right of such owner or owners to claim compensation or damages, and the court shall, if requested, so direct the jury. 63 v. 55, § 5; S. & S. 138.

§ 3443. Council, etc., may fix terms and conditions—

Council, or the commissioners, as the case may be, shall have the power to fix the terms and conditions upon which such railways may be constructed, operated, extended, and consolidated. 67 v. 10, § 1; 66 v. 140, § 1.

When street railroad companies may use tracks in common. R. R. Co. v. R. R. Co., 36 Ohio St. 239.

Where a street railway is constructed and operated under an ordinance which requires the company to keep the street between the rails repaired, etc., similar to the rest of the street, the city has control of the street, and may direct the kind of improvements to be made; and on failure of the company to comply with the notice to make such improvement, the city may make the same and recover the reasonable cost from the company. City of Columbus v. St. R. R. Co., 45 Ohio St. 98.

The rights of electric street railways in streets are superior to those of telephone companies whose electric circuit is disturbed by the operation of the street railway. Railway Co. v. Telegraph Ass'n, 48 Ohio St. 390.

§ 3443a. Watchmen at street crossings, intersections and corners—

Whenever any street railways are operated by electricity, cable, compressed air, or any motive power other than horses or mules, in any municipality, the board of legislation or council of such municipalities shall have the power by ordinance to require the owners or operators of any such street railways to place watchmen at any street crossings, intersections or corners which such board of legislation or council may deem dangerous; and to provide for the proper enforcement of such ordinances by penalties in the way of fine or imprisonment, or both, which may be imposed upon the owner, officer or operator of such street railways or by a penalty of not exceeding \$100 per day, which may be recovered by such municipalities in a civil suit against the

owners or operators of any such street railway failing to place such watchman as may be required. 89 O. L. 346.

(§ 3443-1.) Sec. 1. Establishment of street railroad route in cities first grade, first class (Cincinnati), made valid—

In all cases where in cities of the first grade of the first class the council has heretofore, by ordinance, established any street railroad route and declared the conditions upon which a street railroad should be constructed and operated upon and along such route, and due publication of a notice has been made calling for proposals to construct and operate such street railroad to be awarded to the corporation, individual or individuals that should agree to carry passengers thereon at the lowest rates of fare, and the proposal of a bidder who obtained and filed the written consents of the owners of the majority of the feet front of property on each street on the line of the route has been accepted thereon, and an ordinance passed granting to such bidder the franchise to construct and operate such street railroad, and such bidder has accepted the same and entered into a written contract with such municipal corporation to construct and operate such street railroad, such ordinance, grant, contract and franchise shall be deemed and held, in all respects, to be valid and binding notwithstanding the submission of another bid at such letting by a bidder proposing to carry passengers on such route at a lower rate of fare, who failed and neglected to obtain and file the written consent of any of the property owners on the line of said route. 88 O. L. 303.

See 5 C. C. 609, 623.

(§ 3443-2.) Sec. 2. Authorizing municipal authorities to grant permission to extend tracks, etc.—Fare not to be increased on account of extension, etc.—

In cities of the first grade of the first class the board of city affairs or board of public improvements, or their successors in office, may, by resolution, grant permission to any corporation, individual or company owning or having the right to construct any railroad, to extend their tracks and route subject to such provisions of sections *thirty-four hundred and thirty-seven, thirty-four hundred and thirty-eight, thirty-four hundred and thirty-nine,*

thirty-four hundred and forty, thirty-four hundred and forty-one, thirty-four hundred and forty-two and thirty-four hundred and forty-three of the Revised Statutes as are applicable and are not in conflict herewith, on any street or streets when such board may deem such extension beneficial to the public; and when any such extension is made, the charge for carrying passengers on any street railroad so extended, and its connections made with any other road or roads by consolidation under existing laws, shall not be increased by reason of such extension or consolidation. 88 O. L. 303.

(§ 3443-3.) Sec. 1. Screens for protection of directors of motor power on electric street cars—

Every electric street car other than trail cars which are attached to motor cars shall be provided during the months of November, December, January, February and March of each year, at the forward end with a screen constructed of glass or other material, which shall fully and completely protect the driver, or motorman, or gripman, or other person stationed on such forward end and guiding and directing the motor power by which they are propelled, from wind and storm. 90 O. L. 220.

**(§ 3443-4.) Sec. 2. Penalty for failure to provide screens—
Duty of prosecuting attorney—**

Any person, agent or officer of any association or corporation violating the provisions of this act shall, upon conviction, be fined in any sum not less than \$25 nor more than \$100 for each day each car belonging to and used by any such person, association or corporation is directed or permitted to remain unprovided with the screen required in section *one* of this act; and it is hereby made the duty of the prosecuting attorney of each county in this state to institute the necessary proceedings to enforce the provisions of this act. 90 O. L. 220.

Above act (90 O. L. 220) is constitutional. *State v. Nelson*, 52 Ohio St. 88.

(§ 3443-5.) Sec. 1. Intersecting street railroads; repair of crossings; stopping of cars at crossing—

Where the tracks of two street railroads cross each other or in any way connected at a common grade, when one or both such street railroads use other than horse power for propelling

their street cars, the crossings shall be made and kept in repair at the joint expense of the companies owning the tracks, and all such cars used on said street railroads shall come to a full stop, not nearer than ten feet nor further than fifty feet from the crossing, and shall not cross until the way is clear, and when two or more cars approach the crossing at the same time the car or cars on the road first built shall have the precedence. 88 O. L. 581.

(§ 3443-6.) Sec. 2. Street cars must come to full stop when approaching intersecting steam railway, etc.—

That whenever the tracks of any street railroads in this state cross the tracks of any steam railway at grade, the street railway company operating said line of cars shall cause their street cars to come to a full stop, not nearer than ten feet nor further than fifty feet from the crossing, and before proceeding to cross said steam railway tracks, shall cause some person in their employ to go ahead of said car or cars and ascertain if the way is clear and free from danger for the passage of said street cars, and said street railroad cars shall not proceed to cross until signaled so to by such person so employed as aforesaid, or said way is clear for their passage over said tracks. 88 O. L. 581.

In the absence of extraordinary circumstances it is negligence to cause such street car to cross such railroad track without stopping the car and going ahead as required by this statute. Whether such violation could be justified or excused by any circumstances whatever, *quære*. Cin. St. Ry. Co. v. Murray, Adm'x, 53 Ohio St. 570, affirming, 9 C. C. 291.

(§ 3443-7.) Sec. 3. Penalties—

Every person in charge of any street car or cars who willfully fails to comply with the provisions of this act, and fails to bring said car or cars which he has in charge to a full stop, or causes the same before the way is clear, or signaled so to do to cross said steam railroad tracks, shall be personally liable to any person injured by reason of such failure as aforesaid, to a penalty of one hundred dollars, to be recovered by civil action at the suit of the State of Ohio, in the court of common pleas of any county wherein such crossing or connection is, and the company in whose employ such person having charge of said car or cars is, as well as the person himself, shall be liable in damages to

any person or persons injured in person or property [having charge of such car or cars] as aforesaid. 88 O. L. 581.

(§ 3443-8.) Sec. 1. Construction, maintenance and operation of street railroads outside of municipalities—

Companies incorporated under section 3236 of the Revised Statutes of Ohio for such purpose may construct, maintain and operate electric street railroads, or street railroads urging [using] other than animal power as a motive power, for the transportation of passengers, packages, express matter, United States mail, baggage and freight upon the highways in this state outside of municipalities. 91 O. L. 285.

(§ 3443-9.) Sec. 2. Occupancy and use of public highways—

All such companies shall have power to occupy and use for their tracks, cars and necessary fixtures and appliances, the public highways outside of cities and villages with the consent of the public authorities in charge of or controlling such highways, and with the written consent of a majority, measured by the front foot of the property holders abutting on each of such highways. 91 O. L. 285.

(§ 3443-10.) Sec. 3. Appropriation of private property—

When necessary to enter upon and use private property in the construction and operation of such roads, such companies shall have the same power of appropriation that railroad companies have. 91 O. L. 285.

(§ 3443-11.) Sec. 4. Leases, purchases and traffic arrangements—

Such companies shall have power to lease; purchase or make traffic arrangements with any other street railroad company as to so much of its tracks and other property as may be necessary or desirable to enable them to enter or pass through any city or village, upon the same terms and conditions applicable to other street railroads. And any existing street railroad company owning or operating a street railroad shall receive the cars, freight, pack-

ages or passengers of any other road, upon the same terms and conditions as they carry for the general public. 91 O. L. 285.

(§ 3443-12.) Sec. 5. Consolidation—

Such street railroad companies may consolidate on the terms and conditions applicable to the consolidation of railroad companies; provided, however, no increase of fare shall be allowed on any street railroad route by reason of such consolidation. 91 O. L. 285.

(§ 3443-13.) Sec. 6. Regulations and powers—

Such companies shall be subject to the same regulations now provided for street railroads, in so far as the same are applicable, and shall have all the powers, in so far as they are applicable, that other street railroad companies have. 91 O. L. 285.

Act is constitutional; such a railroad, not operated by steam, is a street railroad. *Deitz v. Traction Co.*, 4 N. P. 399 (C. P.).

What is a street railroad, discussed. *McMaken v. El. St. Ry. Co.*, 5 N. P. 367 (C. P.). See also *Greene v. St. Ry. Co.*, 43 B. 181.

INCLINED PLANE RAILWAYS.

§ 3444. Powers of inclined plane railway companies—

An inclined plane railway company may construct, operate and maintain an inclined plane railway, for the conveyance of passengers and freight, or either, with such offices, depots, and other buildings, as it may deem necessary, and may establish and maintain a park or pleasure grounds, and for such purpose may acquire and hold real estate. 73 v. 229, § 2.

For rights under certain acts named, see 30 B. 321.

§ 3445. How street crossings to be made—

When the part of the railway of such company, which is operated by steam power, crosses a public street or highway, it must pass either over or under such street or highway, and shall be constructed in such manner, and at such distance above or below the same as not to obstruct the ordinary use of such street or highway. 73 v. 229, § 10.

UNION DEPOT COMPANIES.

SECTION

3446. Who may file articles of incorporation.

3447. The articles of incorporation.

3448. Stock owned in equal proportions;
powers.

3449. Who to be directors of the company.

SECTION

3450. By-laws, rules and regulations.

3451. Liability of the several companies.

3452. Certain laws applicable to such com-
panies.

3453. Guaranty and sale of obligations.

§ 3446. Who may file articles of incorporation—

The presidents of two or more railroad companies, running railroads to the same city, town or village, may, by the consent and under the direction of their respective boards of directors, file articles of incorporation in the office of the secretary of state, for the purpose of purchasing depot grounds, and locating, constructing, and maintaining a common or union station-house and passenger depot, and a union railroad by two or more tracks connecting the railroads of such companies for business purposes. 65 v. 63, § 1.

§ 3447. The articles of incorporation—

The articles of incorporation shall specify—

1. The name assumed by such company.
2. The names of the companies, and the city, village, or town where such depot and connection tracks are proposed to be constructed.
3. The amount of capital stock necessary to obtain a site, and construct and maintain such depot and tracks.

The articles signed by the presidents in behalf of the companies, with the corporate seals of the companies annexed thereto, shall be forwarded to the secretary of state, who shall record and preserve the same in his office; a copy thereof, duly certified by the secretary of state, shall be evidence of the existence of such company; and thereafter such company may contract and be contracted with, sue and be sued, locate and take releases of right of way and depot grounds, and appropriate so much land as may be necessary for such depot and tracks. 65 v. 63, § 1; S. & S. 122.

§ 3448. Stock owned in equal proportion—Powers—

The companies whose boards of directors authorize the filing of the articles of incorporation, or assent thereto, shall each be

held to own and be liable to pay an equal proportion of the capital stock; and the provisions of section *three thousand two hundred and eighty-one* shall be applicable to such company. 65 v. 63, § 2; S. & S. 122.

§ 3449. Who to be directors of the company—

The president of each company which enters into such arrangement shall, ex officio, be a director in the union company, unless the board of directors of such company appoint some other person as director; all questions which affect pecuniary liabilities and expenditures shall require the concurrence of two-thirds of all the directors; all officers, agents, and employes of the union company shall be appointed by the concurrence of all the members of the board, and may be discharged by any two members thereof; and the board shall keep a record of its proceedings, which shall be open to the inspection of the stockholders and directors of the companies. S. & S. 122.

§ 3450. By-laws, rules, and regulations—

The board may pass by-laws, rules, and regulations, not inconsistent with the charters of the companies, for its government, and for the regulation of the depot, depot grounds, and the business thereof, and shall appoint such officers and agents as may be necessary; it shall adopt, and post conspicuously in the passenger house, such rules and regulations as will control the conduct of all runners, solicitors, hackmen, and drivers of vehicles; and the officers and agents of the company shall have the same authority to arrest and bring to justice pickpockets, thieves, and persons who violate the public peace, and persons who violate any such rules and regulations so posted, and persons who commit crimes and misdemeanors while on the depot grounds, as constables have by law in their respective townships. 65 v. 63, § 3; S. & S. 122.

Exclusive rights may be given to one hack and buss company affording sufficient accommodations. *Snyder v. Union Depot Co.*, 19 C. C. 368, reversing 7 N. P. 64. See also *Moerder v. Fremont*, 19 C. C. 394, and *State v. Brown*, 7 N. P. 133.

§ 3451. Liability of the several companies—

The several companies represented by the union company shall be jointly liable to the public, and all persons who contract with the union company, for all contracts made and damages

caused by the union company; and, as between themselves, shall be liable to each other in the proportion of the interest of each in the union property, and for all damages, costs and expenses which arise from the fault or neglect of their respective officers and employes. S. & S. 123.

§ 3452. Certain laws applicable to such companies—

All laws for the protection of railroads and their property, and relating to or enforcing the duties and obligations of officers, agents, and employes of railroad companies to the public and to railroad companies, or to either, shall be applicable to the railroad tracks, property, officers, agents, and employes of such union company. S. & S. 123.

(§ 3453.) Sec. 2. Power to borrow money and issue, secure and sell notes or bonds—

Any such company shall have power to borrow money for the purpose of raising means to carry out the powers conferred by the act authorizing the incorporation of union depots without reference to the amount of stock of such company, and may issue coupon or other bonds payable to bearer, bearing interest not exceeding the highest contract rate of interest which may be allowable in this state, at the time; such interest to be payable semi-annually, and such company may also mortgage its franchises, property and revenues of every kind, then owned or subsequently to be acquired, to secure the payment of such loan and interest, or of such bonds and interest; and the stockholders of such company may guarantee the payment of any notes or bonds the company lawfully issues, and it may dispose of the same at such rate of premium or discount as the directors may deem best for its interests. 92 O. L. 118.

MAGNETIC TELEGRAPH COMPANIES.

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- 3471-2. By whom consent to be given.
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§ 3454. Powers of companies—

A magnetic telegraph company heretofore or hereafter created may construct telegraph lines, from point to point, along and upon any public road, by the erection of the necessary fixtures, including posts, piers, and abutments necessary for the wires; but the same shall not incommode the public in the use of such road. 50 v. 274, § 47; S. & C. 299.

A grant to string an unlimited number of wires empowers the company to license others to string wires on its poles. *Newman v. Village of Avondale*, 31 B. 123 (C. P.).

Such company may not injure property as by trimming trees of an adjoining land-owner nor appropriate any of his property rights in the highway without first making compensation. Failure of land-owner to enjoin construction of line will not estop him ten years afterward from asserting his property interest in the highway and in the trees growing upon and in front of his premises. *Daily v. State*, 51 Ohio St. 348.

Where eight wires have been permitted by an abutting property owner to be strung on poles and used for nine years, equity will not entertain a suit to enjoin the stringing of additional wires. *Wirth v. Postal Tel. Cable Co.*, 7 C. C. 290.

§ 3455. Powers of telegraph companies—Unlawful to contract for exclusive right of way—

Any such company may construct, own, use, and maintain any line or lines of magnetic telegraph, whether described in its original articles of incorporation or not, and whether such line or lines are wholly within or partly beyond the limits of this state, and may join with any other company or association in conducting, leasing, owning, using, or maintaining such line or lines, upon such terms as may be agreed upon between the directors or managers of the respective companies; and such companies may own and hold any interest in any such line or lines, or may become lessees

of such line or lines, upon such terms as may be agreed upon; but it shall be unlawful for any such company or companies and the owner or owners of rights of way to contract for the exclusive use thereof for telegraphic purposes. 77 O. L. 264.

Rights of an electric street railroad are superior to those of a telephone company, and if workings of telephone system are disturbed by electric street railway, remedy of the telephone company is to readjust its methods to changed conditions. *Railway Co. v. Tel. Ass'n*, 48 Ohio St. 390.

§ 3456. May enter upon and appropriate land—

Any such company may enter upon any land, whether held by an individual or a corporation, and whether acquired by purchase or appropriation, or in virtue of any provision in its charter, for the purpose of making preliminary examinations and surveys, with a view to the location and erection of lines of magnetic telegraph, and may appropriate so much thereof as may be deemed necessary for the erection and maintenance of its telegraph poles, piers, abutments, wires and other necessary fixtures, and for stations, and the right of way over such lands and adjacent lands sufficient to enable it to construct and repair its lines. 62 v. 72, § 1; S. & C. 153.

Construction and maintenance of a telegraph or telephone line upon highway is an additional burden, for which owner is entitled to additional compensation; and if same is put up before right to do so is acquired, and against owner's objection, court of equity will order same removed. *Smith v. Central Dist. Printing and Tel. Co.*, 2 C. C. 259.

§ 3457. Limitation upon such authority—

No such company shall, without the consent of the owner thereof, in writing, enter a building or edifice, or use or appropriate any part thereof, or erect any telegraph pole, pier or abutment in any yard or inclosure within which an edifice is situate, nor, in cases not provided for in section *three thousand four hundred and sixty-one*, erect any telegraph pole, pier, abutment, wires, or other fixtures, so near to any edifice as to occasion injury thereto, or risk of injury, in case such pole, pier or abutment be overthrown, nor injure or destroy any fruit or ornamental tree. 62 v. 72, § 1; S. & C. 153.

§ 3458. When land to be appropriated is held by a corporation—

When lands sought to be appropriated for lines of magnetic telegraph are held by a corporation incorporated under any law of this state, whether held by purchase, or in virtue of any appropriation authorized by its charter or by any law of this state, the right of the company to appropriate such lands shall be limited to such use of the same as shall not, in any material degree, interfere with the practical uses to which the company is authorized to put such lands under its charter; and no such company shall erect poles, piers, abutments, wires, or other necessary fixtures, in such close proximity to any other line of magnetic telegraph authorized by law to be constructed as to interfere mechanically with the practical working of such telegraph. 62 v. 72, § 2; S. & S. 153.

§ 3459. When such land is held by a railroad company—

The right of such company to use lands held by a railroad company, for the permanent structures of such telegraph, shall be limited to the land which lies within five feet of the outer limits of the right of way of the railroad company, where it is practicable to erect the line within those limits; when the company seeks to appropriate lands that lie beyond those limits, its petition must set forth the facts showing that it is impracticable to erect such line within said limits, and designate, either by a survey and map, or by reference to monuments, or by other means of easy identification, the place or places where the company seeks to establish the line; the probate court shall, in all instances, determine, if it be controverted by the railroad company, whether the erection of the line at the place or places designated will, in any material degree, interfere with the practical uses to which such railroad company is authorized to put such land; and if the court is satisfied that it will so interfere, it shall reject the petition, or require the structure to be erected at such other place or places as the court shall direct; but nothing in this chapter shall be so construed as to authorize any company to appropriate the use of the track or rolling-stock of any railroad company for the purpose of transporting poles, materials or the employes of such telegraph company, or for any other purpose whatever. 62 v. 72, § 3; S. & S. 154.

§ 3460. When the lands lie in more than one county—

Proceedings to appropriate lands to the use of a company, against a defendant whose adjoining or continuous lands lie in more than one county, may be instituted in any county in which any part of such lands lie, and the damages shall be assessed, in one proceeding, in respect of all such lands of the defendant sought to be appropriated, whether lying in the county wherein the court is sitting, or in other counties. 62 v. 72, § 4; S. & S. 154.

§ 3461. How right to use public ground acquired—

When any lands authorized to be appropriated to the use of a company are subject to the easement of a street, alley, public way, or other public use, within the limits of any city or village, the mode of use shall be such as shall be agreed upon between the municipal authorities of the city or village and the company; and if they cannot agree, or the municipal authorities unreasonably delay to enter into any agreement, the probate court of the county, in a proceeding instituted for the purpose, shall direct in what mode such telegraph line shall be constructed along such street, alley, or public way, so as not to incommode the public in the use of the same; but nothing in this section shall be so construed as to authorize any municipal corporation to demand or receive any compensation for the use of a street, alley, or public way, beyond what may be necessary to restore the pavement to its former state of usefulness. 62 v. 72, § 5; S. & S. 154.

Section construed: *State v. Central Union Telephone Co.*, 11 C. C. 55, and 14 C. C. 273.

(§ 3461-1.) Sec. 1. Lines of electric telegraphs may be constructed in any place so they do not incommode the public—

Any person or persons may be and are hereby authorized to construct lines of electric telegraphs, from point to point, upon and along any of the public roads and highways, and across any of the waters within the limits of this state, by the erection of the necessary fixtures, including posts, piers or abutments for sustaining the cords or wires of such lines; provided, that the same shall not in any instance be so constructed as to incommode

the public in the use of said roads or highways, or endanger or injuriously interrupt the navigation of said waters; nor shall this act be so construed as to authorize the erection of any bridge across any of the waters of this state. 45 O. L. 34.

[(§§ 3461-2, 3, 4 and 5) provide for appraisal by county commissioners of damages, punishment for injuring lines, and mode of prosecution.]

(§ 3461-6.) Sec. 6. Legislature may alter act; taxation—

The legislature may at any time alter, modify or repeal this act, and the stock or value invested in said lines of electric telegraph shall be subject to taxation like other property in this state. 45 O. L. 34.

§ 3462. Must receive and transmit dispatches for other lines—

Every company, incorporated or unincorporated, operating a telegraph line in this state shall receive dispatches from and for other telegraph lines, and from or for any individual; and on payment of its usual charges for transmitting dispatches, as established by the rules and regulations of the company, shall transmit the same with impartiality and good faith, under a penalty of one hundred dollars for each case of neglect or refusal so to do, to be recovered, with cost of suit, by civil action, in the name and for the benefit of the person or company sending or forwarding, or desiring to send or forward, the dispatch. 77 O. L. 264.

Telephone company must receive dispatches for telegraph and other companies without discrimination. *State v. Telephone Co.*, 36 Ohio St. 296.

Telegraph company cannot stipulate against damages for error arising from its own negligence. *Telegraph Co. v. Griswold*, 37 Ohio St. 301.

The negligent failure of a telegraph company to deliver a message does not authorize an action by him to whom it is addressed to recover for resulting injury to his feelings and affections when no other injury results. *Morton v. W. U. Tel. Co.*, 53 Ohio St. 431; *Kester v. W. U. Tel. Co.*, 8 C. C. 236.

§ 3463. When to forward messages—

When the person who sends a dispatch desires to have it forwarded over the lines of other telegraph companies, whose termini are respectively within the limits of the usual delivery of

such companies, to the place of final destination, and tenders to the first company the amount of the usual charges for the dispatch to the place of final delivery, the company shall receive the same, and, without delaying the dispatch, shall pay to the succeeding line the necessary charges for the remaining distance; and the succeeding line shall accept the same, and forward the dispatch in the same manner as if the sender had applied to it in person, and paid the usual charges, and for the omission so to do it shall be liable to a like penalty, as provided in the last section. 62 v. 72, § 8; S. & S. 155.

§ 3464. Agent must indorse dispatch, when—

When application is made to any such company to send a dispatch, the officer, agent, clerk, or servant appointed by the company to receive dispatches at that station, shall inform the applicant, and, if required by him, write upon the dispatch, that the line is not in working order, or that the dispatches on hand for transmission will occupy the time so that the dispatch offered cannot be transmitted within the time required, if the facts are so; and for an omission so to do, or for intentionally giving false information to the applicant in relation to the time within which the dispatch offered may be sent, such officer, agent, clerk, or servant, and the company by which he is employed, shall incur the penalty provided in section *thirty-four hundred and sixty-two*. 62 v. 72, § 8; S. & S. 155.

§ 3465. Penalties for not transmitting or delivering message—

Every telegraph company, incorporated or unincorporated, operating any telegraph line in this state, shall transmit and deliver all dispatches in the order in which they are received for transmission or delivery, under the like penalty of one hundred dollars, as provided in section *thirty-four hundred and sixty-two*; but arrangements may be made with the proprietors or publishers of newspapers, for the transmission, for the purpose of publication, of intelligence of general and public interest, out of its regular order, and dispatches by officers of the state or the United States, on public business, may have preference over all private business, when the public interest requires such preference; no company shall be required to deliver dispatches at a greater distance from the station at which they are received than its published regulations require;

and if an applicant direct a dispatch to be mailed at the place of delivery, and offer to pay the necessary postage thereon, the company shall affix the necessary postage stamp, and mail the dispatch in time for the first mail that departs after such dispatch is received at the office of delivery, and for the omission so to do the company shall be liable to a like penalty as provided in section *thirty-four hundred and sixty-two*.. 62 v. 72, § 9.

In case of failure to deliver a telegraphic message, the company is only liable for such damages as naturally flow from the breach of contract, or such as may fairly be supposed to have been within the contemplation of the parties, at the time the contract was made. *Bank v. Telegraph Co.*, 30 Ohio St. 555.

If the telegraph company is in default, but its default is made mischievous to a plaintiff only by operation of some other intervening cause, such as the dishonesty of a third person, the rule "*causa proxima non remota spectatur*" applies, and the company cannot be made responsible for the loss occasioned by such third person. *Ib.*

Where a telegram indicates on its face the importance of prompt delivery, company will be liable for loss caused by failure to deliver. *W. U. Tel. Co. v. Porter*, 33 B. 300.

Authorities on liability are collected in 26 B. 138.

§ 3466. Penalties against persons connected with companies—

Any person connected with a telegraph or messenger company, incorporated or unincorporated, operating a line of telegraph, or engaged in the business of receiving and delivering messages in this state, in any capacity, who willfully divulges the contents, or the nature of the contents of a private communication intrusted to him for transmission or delivery, or who willfully refuses or neglects to transmit or deliver the same, or willfully delays the transmission or delivery of the same, or who willfully forges the name of the intended receiver to any receipt for any such message or communication, or article of value intrusted to him by said company, with a view to injure, deceive or defraud the sender or intended receiver thereof, or any such telegraph or messenger company, or to benefit himself or any other person, shall be imprisoned in the county jail not exceeding three months, or fined not exceeding five hundred dollars, at the discretion of the court. 94 O. L. 209.

§ 3467. Penalties for knowingly transmitting dispatches forged, etc.—

A person who knowingly transmits by telegraph line any false communication or intelligence, with intent to injure any person, or to speculate in any article of merchandise, commerce or trade, or with intent that another may do so, or knowingly sends or delivers a dispatch that is forged, or not authorized by the person whose name purports to be signed thereto, shall be liable to the same penalty as is provided in section *thirty-four hundred and sixty-two*. 62 v. 72, § 11; S. & S. 156.

§ 3467a. Unlawfully obtaining, using, intercepting or delaying message—Penalty—Prosecutions—

Whoever shall willfully and maliciously cut, break, tap or make any connection with, or read or copy by the use of telegraph or telephone instruments, or otherwise, in any unauthorized manner, any telegraphic message or communication from any telegraph or telephone line, wire or cable, so unlawfully cut or tapped in this state; or make unauthorized use of the same, or who shall willfully and maliciously prevent, obstruct, or delay, by any means or contrivance whatsoever, the sending, conveyance or delivery in this state of any unauthorized telegraphic message or communication by or through any telegraph or telephone line, cable or wire under the control of any telegraph or telephone company doing business in this state; or who shall willfully or maliciously destroy, disconnect, displace, cut, break, tap, ground or make any connection with or in any way willfully and maliciously interfere with any of the poles, cables or wires legally erected, put up or strung, electrical apparatus, appliances or machinery of any kind used in the construction of or in the operating of any electrical street railway or electric light plant or plant used in the producing or generating electric power in this state; or who shall willfully or maliciously aid, agree with, employ, or conspire with any other person or persons to do any of the aforementioned unlawful acts, shall be deemed guilty of felony, and shall be punished by a fine of not more than one thousand dollars nor less than two hundred dollars, or by imprisonment in the penitentiary for a period of not less than one year nor more than three years, or by both fine and imprisonment within the limits hereinbefore specified, at the discretion of the court. Prosecu-

tions under this act shall be by indictment in any court having criminal jurisdiction. 90 O. L. 346.

§ 3468. When and how telegraph structures may be removed—

If, at any time after the erection of a line of magnetic telegraph upon lands held by a corporation, the corporation have occasion to use land upon which a telegraph pole, pier, abutment, or other fixture has been erected, for any of the purposes authorized by its charter, the company shall remove such pole, pier abutment or fixture, to such convenient place as may be designated by the corporation requiring the use of the ground, upon reasonable notice, given in writing, and erect the same in such new place, so as not to interfere with the practical uses to which the corporation is authorized to put such land; and if it is impracticable to erect a line of magnetic telegraph upon the lands of such corporation, in consequence of the uses to which the corporation put the lands, the telegraph company may appropriate adjoining lands, by a separate proceeding for that purpose. 62 v. 72, § 12; S. & S. 156.

§ 3469. Repair of structures enforced—

If, at any time after the erection of such telegraph line on the lands of a corporation, the corporation apprehend danger, or risk of danger, to its works of practical operations, in consequence of decay or defect in the mode of structure of any of the works of the telegraph company, it may require the company, upon five days' notice, in writing, to repair such decayed or defective works; or, if the danger is imminent, so as not to admit of delay, the corporation may, without notice, repair the defect, and recover the reasonable expense thereof, with costs of suit, before any court of competent jurisdiction. 62 v. 72, § 13; S. & S. 157.

§ 3470. Consolidation—

Where two or more telegraph companies, whose several lines are not parallel or in competition with each other, and when so united will form a continuous line for receiving and transmitting dispatches, desire to consolidate into a single corporation, they may do so in the manner, and subject to the rules provided in

chapter two for the consolidation of railroad companies. 78 O. L. 26.

§ 347L. Chapter applies to telephone companies—

The provisions of this chapter shall apply also to any company organized to construct any line or lines of telephone; and every such company shall have the same powers, and be subject to the same restrictions, as are herein prescribed for magnetic telegraph companies.

See notes under sections 3456 and 3462. See also *Railway Co. v. Telegraph Ass'n*, 48 Ohio St. 390, reversing *City, etc.*, *Telegraph Ass'n v. Cin. Inclined Plane Railway Co.*, 23 B. 165; *Cin. Inclined Plane Railway Co. v. City, etc.*, *Tel. Ass'n*, 24 B. 471; *Monahan v. Tel. Co.*, 7 N. P. 95 (C. P.).

§ 3471a. Laws applicable to electric light and power and automatic package carrier companies—Municipal consent; penalty for violation; application of act, etc.—

The provisions of this chapter, so far as the same may be applicable, except section *three thousand four hundred and sixty-one*, shall apply also to any company organized for the purpose of supplying the public and private buildings, manufacturing establishments, streets, alleys, lanes, lands, squares and public places with electric light and power, or automatic package carrier; and every such company shall have the same powers, except those given by said section *three thousand four hundred and sixty-one*, and be subject to the same restrictions, as are herein prescribed for magnetic telegraph companies. Provided, however, that in order to subject the same to municipal control alone, no person or company shall place, string, construct or maintain any line, wire fixture or appliance of any kind for conducting electricity for lighting, heating or power purposes through any street, alley, lane, square, place or land of any city, village or town, without the consent of such municipality; and this inhibition shall extend to all levels above and below the surface of any such public ways, grounds or places, as well as along the surface thereof; but this inhibition shall not be applicable to any rights which have heretofore been received and exercised through proceedings of any probate court. Any person or company violating any portion of the inhibition aforesaid shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum

not less than one hundred and not more than five hundred dollars. The means thus created for enforcing said inhibition shall be held to be only cumulative to any other lawful means open to the municipality by way of injunction or otherwise; and this act shall apply to actions and causes of action or proceeding named in section *seventy-nine* of the Revised Statutes, except such as may be pending on error and not on appeal, in any circuit court of the state. 92 O. L. 204.

An electric lighting company is bound to furnish light to all applicants at a reasonable price. The rates may be regulated by city council under section 2478. *R. R. Co. v. Bowling Green*, 57 Ohio St. 336.

§ (3471-1.) Sec. 1. Subways for telephone and telegraph wires in cities; erection of poles; penalty—

Any company organized under the laws of this or of any other state, and owning and operating a telephone exchange, or doing a telegraph business, in any city in this state, may construct and maintain underground wires and pipes, or conduits and other fixtures for containing, protecting and operating such wires in the streets and public ways of said city, when the consent of such city has been obtained therefor, and it shall be unlawful for any corporation, company or individual to erect any telephone or telegraph pole or poles within that portion of any city in this state where subways have been constructed, except such poles as may be required for the purpose of distributing wires from said subways to subscribers, stations, and all such poles shall, so far as possible, be located in alleys; provided that this section shall not apply to existing telegraph companies until such companies shall have authority and sufficient time to construct subways; and whoever violates any of the provisions of this section shall be punished by a fine of not more than two hundred and not less than fifty dollars. 91 O. L. 205.

§ (3471-2.) Sec. 2. By whom consent shall be given—

Such consent shall be given by the board of city commissioners, board of public improvements, board of public works, or board of administration of such city, or their respective successors in office, or by the city council in cities where no such board exists. 88 O. L. 296.

(§ 3471-3.) **Sec. 1. Powers of electric light and power companies—**

A company organized for the purpose of supplying electricity for power purposes, and for lighting the streets and public and private buildings of a city, village, or town, may manufacture, sell and furnish the electric light and power required therein for such and other purposes, and such companies may construct lines for conducting electricity for power and light purposes through the streets, alleys, lanes, lands, squares and public places of such city, village or town, by the erection of the necessary fixtures, including posts, piers and abutments necessary for the wires, with the consent of the municipal authorities of the city, village or town, and under such reasonable regulations as they may prescribe. Provided, that all wires erected and operated under the provisions of this act shall be covered with a waterproof insulation, and said poles, piers, abutments and wires shall be so located and arranged as not to interfere with the successful operation of existing telegraph and telephone wires.

As to powers of electric light companies, see *Hauss Electric Lighting Power Co. v. Jones Bros. Electric Co.*, 23 B. 137.

(§ 3471-4.) **Sec. 2.**

The municipal authorities of any city, village or town, in which any electric light company is organized, may contract with any such company for lighting the streets, alleys, lands, lanes, squares and public places in such city, village or town. 83 O. L. 143.

For sections 3471-44, 5, 6, 7 and 8, see memorandum of laws, page 6.

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§ 3472. Powers of companies—

A turnpike or plank-road company may construct a turnpike or plank-road, as shall be named in its articles of incorporation, between the termini named therein, and when it is so designated in the articles of incorporation, may improve and hold more than one road, when such roads diverge from one point, or branch from each other in the course of their routes. 50 v. 274, § 32; 51 v. 484, § 2; S. & C. 239, 319.

The surface of such road is private property of the company, and a municipality cannot lay pipes under the surface without compensation to the company. *Cin. & Avondale Turnpike Co. v. Village of Avondale*, 17 B. 294.

Fee simple not being necessary, the company cannot purchase same to de-

may or prevent the building of a bridge over the turnpike by a railroad company. *Wooster Turnpike Co. v. Ry. Co.*, 15 C. C. 268.

§ 3473. Supplemental articles, etc.—

Any such company may file supplementary articles, for the specification and designation of an additional branch road connected with any previous work constructed by it, and may unite with any other turnpike or plank-road company in maintaining and holding any road in common between them, and divide the proceeds thereof in proportion to their interest. 51 v. 484, § 3; S. & C. 319.

§ 3474. May use stone, gravel, or plank—

Any turnpike or plank-road company, in the construction or repair of its road, may make or construct any part thereof with either stone, gravel, or plank, as one or the other material may be most convenient for such part of the road; when plank is used it must be two and one-half inches thick, and cover sufficient of the road for the accommodation of teams, and may be placed in the center or on either side of the road; and a change of material must not impair the utility of the road, or render it less valuable to the traveling public. 50 v. 274, § 33; 51 v. 395, § 2; 52 v. 24, § 1; S. & C. 295, 334, 370.

§ 3475. May enter upon and appropriate lands—

Any such company, or its agents, may lay out, locate, survey, and make the turnpike or plank-road for the making of which it is incorporated, through any improved or unimproved lands, on the best route between the points or places designated in the articles of incorporation, contracting for and paying the owners of the land over which the road passes the damage done thereto by laying out and making the road, and for materials taken therefrom for constructing or repairing the same; when the company and the owner cannot agree as to the amount of compensation, or when the owner is unknown or incapable of contracting, then such damages shall be assessed and paid in the manner prescribed by law; and when any part of the road is rendered unsafe for travel by the current of any river, watercourse, or other unavoidable cause, the company may change the location of the road at such place so far as may be necessary, and may appro-

priate land therefor in the manner aforesaid. 50 v. 274, § 32; 62 v. 36, § 1; S. & C. 293; S. & S. 116.

§ 3476. How right to use bridge or street acquired—

Whenever a company deems it expedient or necessary, in laying out or building a turnpike or plank-road for which it has become incorporated, to enter upon and take possession of any road, street, alley, or bridge, it shall present to the commissioners of the county in which such road, street, alley, or bridge, is situate a petition, signed by at least twelve citizens living upon or being interested in such road, street, alley, or bridge, and shall cause a notice to be published in some newspaper of general circulation in the county, for four consecutive weeks, of the object and prayer of such petition, that remonstrances may be made thereto; and the commissioners, at their next meeting after the presentation of such petition, notice having been given as aforesaid, shall hear and determine the same; and if it appear that it will be for the interest of the community using such road, street, alley, or bridge, to have the same taken and used for the purpose of constructing such turnpike or plank-road thereon, the commissioners shall grant a permit, in writing, to the company, to take and use the same on such terms as they may deem fit for the interest of the community; and the company shall thereby acquire an exclusive right of way in such road, street, alley, or bridge; but nothing in this section shall be so construed as to extend to roads, streets, alleys, or bridges, within the limits of a city or village in this state, nor to any macadamized road. 63 v. 61, § 4; S. & S. 141.

§ 3477. Width and grade—

All turnpikes and plank-roads shall be opened not exceeding sixty feet wide, thirty feet of which shall be cleared of brush and logs, and at least sixteen feet shall be made an artificial road, composed of stone, gravel, wood, or other convenient material, well compacted together in such manner as to secure a firm, even and substantial road, and in no case shall the ascent in any such road be greater than five degrees; but when a company has been licensed by the county commissioners as directed by law, and has collected tolls on its road for ten years or upward, it may demand and receive such tolls thereon as are authorized

by law, when the grade does not exceed seven degrees. 66 v. 46, § 1; 75 v. 90, § 34.

§ 3478. How authority to take toll acquired—

A company, when it has completed its road, or any part thereof, not less than three miles, and when, from time to time thereafter, it has completed any further or continuous portion thereof, may apply to the commissioners of the county in which the finished road, or part thereof, lies, or in case the same lies in two or more counties, to the commissioners of either of the counties, and the commissioners shall appoint three judicious, disinterested freeholders, who shall, on oath, examine the same, and report their opinion to the commissioners, in writing; if they report that the road, or such part thereof, is completed agreeably to the provisions of this chapter, the commissioner shall, by license in writing, authorize the company to erect gates, at suitable distances, and demand and receive, of persons traveling such road, the tolls allowed by law; if any such commissioner is a stockholder in the company making the application, the duties required of the commissioner shall devolve upon the probate judge of the county or counties aforesaid; and if any such probate judge is a stockholder in the company, such duties shall devolve upon the common pleas judge of the district in which such road lies, or the judge of any of the districts within which such road lies, in case the same lies in two or more districts. 67 v. 94, § 1; 50 v. 274, § 35; 51 v. 395, § 3; 51 v. 484, § 4; 69 v. 196, § 1; S. & C. 295, 320, 334.

§ 3478a. Extension of turnpike road to other improved road—

That any turnpike company, whose beginning point is in a turnpike road, and having completed more than two and one-half miles, but less than three miles, and connecting its said road with an improved graveled road, or with another turnpike road, shall have all the privileges, and shall in all other respects conform to the requirements of said original section *thirty-four hundred and seventy-eight*: provided, that the county commissioner shall first authorize said privilege by a vote entered upon their journal. 79 O. L. 144.

§ 3479. Penalties for evading the gates—

A person using any such road, who, with intent to defraud any such company, or to evade the payment of toll, passes through any private gate or bars, or along any other ground near a turn-pike, or plank-road gate erected in pursuance of law, or practices any fraudulent or forcible means with intent to evade or lessen the payment of such toll, shall, for every such offense, forfeit and pay a fine of five dollars, to be recovered with cost of suit and amount of toll due for passing through any such gate, before any justice of the peace of the county in which such offense was committed, without stay of execution. And the fine or fines when collected for such offense, shall be paid into the common school fund in the township in which such offense was committed, but nothing herein shall be so construed as to prevent persons using any such roads between gates for common purpose. 78 O. L. 77.

See Cin., etc., Ave. Co. v. Bates, 2 C. C. 376.

§ 3480. Mile stones—

Each company shall put up a post or stone at the end of each mile, with the number of miles from some noted point or place, at one end of the road, fairly cut or painted thereon, and shall place near each gate a board, with the rates of toll painted thereon; and no toll shall be demanded unless such boards are kept up. 50 v. 274, § 38.

§ 3481. Rates of toll—

Every company entitled by the laws of this state to charge tolls may receive from persons traveling on or using its road, the following tolls, and no more, for every ten (10) miles travel on such road, and in the same proportion for any less distance, to wit: For every four-wheeled carriage or other vehicle, drawn by one horse or other animal, fifteen cents, and for each additional animal, five cents; for every sled or sleigh drawn by one horse or other animal, five cents, and for each additional animal, five cents; for every horse, or mule and rider, five cents; for every horse, mule or ass, six months old or upward, three cents; for every head of neat cattle, six months old or upwards, one cent; for every head of sheep or hogs, one-half cent; for every stage-coach or omnibus, drawn by two horses or other animals, thirty

cents, and for each additional animal, ten cents; for every two-wheeled carriage drawn by one horse or other animal, ten cents, and for each additional animal, five cents; and for every engine wagon or other vehicle, drawn or propelled by steam or otherwise than herein provided, such companies may charge and receive such rates of toll as their directors or board of managers may from time to time direct, but not to exceed five (5) cents per mile; but on all turnpike roads constructed of and kept in repair with two-thirds broken limestone the companies operating the same may charge and receive for each ten miles travel on such road, and in the same proportion for any less distance, to wit: For every four-wheeled carriage or other vehicle drawn by one horse or other animal, twenty cents, and for each additional animal, ten cents; for every sled or sleigh drawn by one horse or other animal, ten cents, and for each additional animal, five cents; for every horse or mule and rider, ten cents; for every horse, mule or ass, six months old or upwards, five cents; for every head of neat cattle, six months old or upward, one and one half cents; for every head of hogs, three fourths of a cent; for every head of sheep, one-half cent; for every stage-coach or omnibus, drawn by two horses or other animals, forty cents, and for each additional, ten cents; for every two-wheeled carriage drawn by one horse, fifteen cents; and for every engine, wagon or other vehicle, drawn or propelled by steam or otherwise than herein provided, such companies may charge and receive such rates of toll as their directors or board of managers may from time to time direct, but not to exceed five (5) cents per mile; but persons going to and from their regular place of worship on the Sabbath, or to and from funerals, militia musters, or elections, jurymen going to and returning from their attendance at court, and the troops and armies of the United States, and of this state, may pass on any such road free of toll; and a company incorporated for the purpose of constructing a turnpike or plank-road from a mine or quarry to a railroad, canal, slack-water navigation or navigable water, macadamized road or place within or upon the borders of this state, may, when such road is completed, charge and collect such amount of toll for teams hauling the products of such mines or quarries on its road as its directors may determine, not exceeding four cents per mile for two-horse teams, and an increase of two cents per mile for each additional horse; but such rates shall not be charged for teams hauling the

products of such mines or quarries for more than eight miles, nor shall other travelers on such roads be charged more than the ordinary rate of toll per mile as allowed by section *thirty-four hundred and eighty-one*. 88 O. L. 33.

§ 3482. Repair of roads within municipalities—

If a company fail to keep any part of its road within the limits of a municipal corporation in repair for five days successively, the proper authority of such municipal corporation may pass a resolution requiring such company to repair the same within ten days after the service of a copy of such resolution on the gate-keeper nearest such municipal corporation, and the company shall declare its intention to abandon or repair the same; in case of a failure or refusal so to do within thirty days, or in case of a failure or refusal to repair in ninety days, the municipal corporation may file a complaint, in writing, with a copy of the resolution, in the court of common pleas of the county, describing the portion of the road required to be repaired, and the court, or any judge thereof, shall appoint two disinterested persons as inspectors, who shall view the portion of the road complained of, and return their findings thereon, under oath, to the court, within ten days; and if they find the complaint to be true, such portion of the road shall be declared abandoned by the company, and the municipal corporation may improve or repair the same, and assess and collect the cost of such improvement or repairs in the same way as is provided by law in relation to the improvement of streets. 51 v. 464, § 1; S. & C. 333.

See *Village of Madisonville v. Turnpike Co.*, 17 B. 30.

§ 3483. Proceedings to enforce repair—

Notice of the complaint, and of the appointment and time of meeting of the inspectors, shall be served on the president or other officer of the company, or at its principal office, five days before the meeting of the inspectors; and if such service be made by any person other than the sheriff, it shall be verified by the oath of the person making the same; no toll shall be received at the gates for the portion of the road so declared abandoned; and if the keeper of any gate demand and receive toll for the same, he shall be liable to pay the sum of five dollars to the party injured, to be recovered by civil action before any justice of the

peace having jurisdiction; [and] the costs of the proceeding on the complaint shall be paid by the company, if the action be sustained, but if not sustained they shall be paid by the municipal corporation, and execution shall issue therefor as in other cases. 51 v. 464, § 2; S. & C. 334.

§ 3484. Repair of roads outside of municipalities—

If any company fail to keep in repair its road outside the limits of a municipal corporation for five days successively, or fail to build or rebuild any of the bridges or culverts across any or all of the streams crossing its road for a period of six months, any person may file a complaint, in writing, before any justice of the peace of the county, setting forth the nature and extent of the defect complained of, and designating the place or places in the road where it exists; the justice, upon at least three day's notice, to be given to the gate-keeper nearest the place complained of, shall appoint two disinterested persons as inspectors, to meet at the place complained of within five days, and of the time and place of which meeting reasonable notice shall be given to such gate-keeper; the inspectors shall then examine into the truth of the matter complained of, and if they find the complaint to be true, they shall file with the justice a report of their finding, in writing, and send a certified copy of the complaint, and of their finding thereon, to the keeper of each of the gates between which the defective place or bridge is located, and thereafter no toll shall be received at such gates for the intermediate distance until the parts of the road found defective by the inspectors are fully repaired, or an appeal is taken as hereinafter provided; if the keeper of any such gate demand and receive toll contrary to the provisions of this section he shall be liable to pay the sum of five dollars to the party injured, to be recovered by action before any justice of the peace having jurisdiction; the company shall be liable to any person injured, for the damages sustained by reason of such road or bridge being suffered to remain out of repair by the neglect of the company; the justice shall record the complaint, and the report of the inspectors; and the inspectors and justice shall be entitled to receive one dollar per day for their services, which shall be paid by the company, if the complaint be sustained; and if it fail, then by the complainant; and to the

amount so taxed shall be added the expense of sending the notice to the gate-keepers, as required by this section, which shall be paid as aforesaid, and for which the justice shall render judgment against the party liable for the payment thereof. 75 v. 106, § 1; 64 v. 51, § 1: S. & C. 150.

§ 3485. Appeals in such cases—

If the sum necessary to make such repairs exceed twenty dollars, the company may appeal the proceeding, and from the report and judgment as to costs, to the court of common pleas of the county, on filing affidavit as to cost of repairs, and giving bail as in other cases of appeal, within ten days after the service of the certified copy of the report of the inspectors; the condition of the appeal bond shall be to abide by and perform the order of the court of common pleas; and the court of common pleas shall hear and determine as to the truth of the complaint and report, and make such order as to the collection of tolls while the proceeding is pending as the court may deem just; and if, upon the final hearing, the court find the complaint and report true, in whole or in part, it shall make such order as to such repairs, and as to the collection of tolls, as it may deem just. 75 v. 106, § 1; 64 v. 51, § 2; S. & S. 151.

§ 3486. Penalties against toll gatherers for detaining travelers—

If a toll gatherer on a turnpike or plank-road unreasonably detain a passenger after the toll has been paid or tendered, or demand or receive greater toll than is allowed by law on such road, he shall forfeit and pay a sum not exceeding twenty dollars, to be recovered, with costs of suit, before any justice of the peace having jurisdiction thereof, without any stay of execution; but no suit shall be commenced against a toll gatherer for an offense committed or penalty incurred under this section, unless the same be commenced within twenty days from the time the offense was committed or the penalty incurred. 50 v. 274, § 39; S. & C. 297.

§ 3487. Penalties for fast riding or driving over bridges—

No person shall carry fire across any wooden bridge, on any turnpike or plank-road, in this state, except in a lantern or close vessel, under a penalty of five dollars; and no person shall ride

or drive a horse, or drive a stage-coach or other vehicle, over any such bridge, faster than a walk, under a penalty of two dollars; but United States express mail shall not be subject to such penalty. 39 v. 36, § 3; S. & C. 336.

§ 3488. Penalties for obstructing roads—

Whoever deposits any wood, stone, or other kind of material, on any part of a turnpike or plank-road inside of the ditches of such road, or outside of the ditches, but so near thereto as to cause the banks thereof to break into the same, or causes the accumulation of rubbish, or any kind of obstruction, shall forfeit and pay the sum of five dollars. 38 v. 36, § 5; S. & C. 336.

§ 3489. How penalties recovered—

All penalties and forfeitures incurred under the provisions of this chapter shall be recoverable, with costs of suit, before any justice of the peace having jurisdiction of the same, and shall be paid into the treasury of the proper county, as in other cases. 39 v. 36, § 6; S. & C. 336.

§ 3490. Travelers must, on meeting, go to the right—

All persons driving carriages or riding on horseback on any turnpike or plank-road shall, on meeting carriages, or persons on horseback, keep to the right, so as to leave at least half of the road free; and if any person neglect or refuse to comply with the provisions of this section, or in any other manner hinder or obstruct any person in the free passage of any such road, he shall, on conviction thereof, before any justice of the peace having jurisdiction thereof, for every such offense, forfeit and pay not less than one dollar nor more than twenty dollars, at the discretion of the justice, at the suit and for the use of the person aggrieved, and shall moreover be liable to the person aggrieved, for any damages he may sustain. 36 v. 104, § 16; S. & C. 336.

§ 3491. When municipal limits are extended beyond a toll-gate—

No company shall hereafter erect a toll-gate and collect tolls within the limits of any city or village, or within eighty rods of such limits; and when by the creation of a village, or the extension of the limits of a city or village, a toll-gate is brought within such limits, or within eighty rods thereof, the company

shall remove the toll-gate to a point on its road not nearer to such limits than eighty rods, and so much of its road as is included within the limits of such city or village shall become a public street, and be kept in repair as other public streets, but no toll shall be taken thereon; but compensation shall be made to the company for the damages it will sustain by reason of such removal of its toll-gate, and surrender of such part of its road, and if the company and the proper authorities of the city or village do not agree thereon, the damages shall be ascertained in proceedings which the municipal authorities shall commence, to appropriate such property to the use aforesaid in the manner provided by law for the appropriation of property by municipal corporations, or, in default of such agreement, or the institution of such appropriation proceedings, the company, at any time after the removal of the toll-gate, may recover the same from the city or village, by civil action. 66 v. 36, § 1; 75 v. 90, § 34.

See Turnpike Co. v. Springfield, 27 Ohio St. 584, for power to charge toll for road in city limits. See Turnpike Co. v. Kelly, 41 Ohio St. 144, and Village of Madisonville v. Turnpike Co., 17 B. 30.

§ 3492. May sell bridge or road in such limits to city or village—

A company, any part of whose road or bridge is, or hereafter becomes, embraced within the corporate limits of a city or village, may contract with the proper authorities of such city or village, or of the township or county in which the same is situate, for the disposal, release and abandonment of such part of its road or bridge, for such compensation and upon such terms as may be agreed upon between the company and such authorities; and any such contract heretofore made shall be as good and valid as if made under and by virtue of this section. 53 v. 180, § 1; S. & C. 338.

§ 3493. Foreclosure of mortgages on roads—

When a company executes a mortgage upon its road, or any part thereof, the mortgagee, or the assignee thereof, may, at any time after the money secured by the mortgage becomes due, foreclose the mortgage in the same manner as if it were upon real estate, and the sale so made shall be held to pass to the purchaser the corporate franchises of such company as fully as the mortgagor held the same at the time of executing the mortgage;

and the laws relating to the foreclosure of mortgages upon real estate shall be applicable to the foreclosure of mortgages upon turnpikes or plank-roads. 54 v. 179, § 1; S. & C. 339.

§ 3494. Appraisers—The purchaser takes the franchises—

In such proceeding the court shall appoint the appraisers, and when the road runs into or through more than one county, it may order the same to be appraised and sold entire, or in parcels, as to it may seem expedient; and the purchaser of any such road, or part thereof, shall be entitled to exercise all the corporate franchises purchased as fully as they belonged to such company before such sale, in any name that may be assumed by such purchaser. 54 v. 179, § 2.

§ 3495. How road surrendered to county—

Any company having its road located or constructed, or having the corporate right to construct any such road, through or into any county or counties of this state, may, with the consent of three-fourths of the stockholders, and with the like consent of all of the commissioners of such county or counties, relinquish and transfer to the commissioners of such county or counties the whole or any part of its road, together with all rights and privileges appertaining thereto; but any such transfer to such commissioners shall be limited to the part of such road within the boundaries of such counties respectively, and the transfer shall be made without consideration, and no tolls shall be collected on such road within such county or counties. 51 v. 405, § 1; 58 v. 5, § 1.

§ 3496. How such transfer to be evidenced—

Such transfer shall be evidenced by the execution of a written declaration, signed by the president or other principal officer, and the secretary or other recording officer, and under the seal of the company, and shall take effect and have full force when there is deposited with the auditor of the county within which the relinquished road lies the written declaration, or a copy thereof, and an entry is made upon the journal of the commissioners of such county, of an acceptance, signed by all the commissioners, of such relinquishment or transfer; which written declaration, so deposited, shall be entered by the auditor upon his record of roads, and thereafter such road, or part of road,

shall be under the control of the commissioners of the county in which the same lies, who shall, by a proper order, provide that the same shall be a public highway, and that no tolls be collected thereon within the limits of such county. 58 v. 5, § 2.

§ 3497. Private sale of road—

Any such company may, with the consent of three-fourths of the stockholders, relinquish and transfer, by sale or otherwise, to any person or persons other than commissioners of counties, the whole or any part of its road, together with all rights and privileges appertaining thereto, which sale or relinquishment shall be evidenced by a written deed of conveyance, under the seal of such company, signed by the president or other principal officer of such company, and the secretary or other recording officer thereof, which shall, before it shall have any validity or effect, be recorded in the official records of deeds of each county within which the road, or any part thereof, which has been so sold and conveyed, lies, or be left for record in the office containing such official records; but such sale or transfer may be made upon the consent of the holders of three-fourths of the entire stock of the company, the holders of the stock so consenting in that case to be liable in their individual capacity to any stockholder not assenting, for such loss or injury as such non-assenting stockholder may sustain by reason of such sale or transfer. 54 v. 198, § 3.

§ 3498. When and how a road may be sold to county commissioners—

The board of directors of any company, when authorized so to do by a vote of the holders of the majority of the stock of the company, represented at a meeting of the stockholders called for that purpose by either the board of directors or ten stockholders of the company, of which at least twenty day's public notice has been given, by advertisement in not more than two newspapers published in the county where such road or part thereof is situated, shall sell and convey the whole or any part of its road to the commissioners of the county, together with all rights and privileges appertaining thereto, which sale or relinquishment shall be evidenced by a written deed of conveyance, under the seal of such company, signed by the president or other principal officer of

such company, and the secretary or other recording officer thereof, which shall, before it shall have any validity or effect, be recorded in the official records of deeds in each county within which the road or any part thereof which has been so sold and conveyed lies, or be left for record in the office containing such official records.

§ 3498a (77 O. L. 83) provides that the county commissioners may purchase toll roads.

§ 3499. How toll roads voted to be purchased by counties appraised—

In any county where, heretofore or hereafter, an affirmative vote has been or may be given, at any general election, in favor of purchasing any or all the toll roads, or parts thereof, lying within such county, at a price to be fixed by three disinterested appraisers, who shall be appointed as follows: One by the court of common pleas of the county, or a judge of said court resident of the subdivision in which the county is situate; one by the probate judge of the county, and one by the commissioners of the county; said appraisers, after being sworn faithfully and honestly to discharge their duties in that behalf, shall personally inspect the road or roads, or parts thereof, so far as the same may be within such county, and make and return in writing to the commissioners, a valuation of each of the roads or parts thereof; and if the commissioners, from any cause, fail to purchase any road or part thereof, other appraisers may be appointed in the same manner. But nothing herein contained shall prevent the commissioners from making or receiving propositions, and to purchase at any time within two years after an appraisal has been had at the appraised price; any law heretofore passed to the contrary notwithstanding. 78 O. L. 149.

§ 3500. Report by the commissioners, and effect thereof—

If the report is satisfactory, and the commissioners, or a majority of them, indorse their approval thereon as to all or any of the roads, or parts thereof, they shall cause an entry to be made to that effect on their journal, and thereupon they may purchase the same at a price not exceeding such appraisal, and pay such company or companies in money, or in bonds to be issued as hereinafter specified; and thereupon such roads, or parts thereof,

so purchased, shall cease to be toll roads, and become free roads, to be kept in repair in the manner prescribed in chapter ten, title seven, part two.

§ 3501. Bonds for the purchase and tax for their redemption—

For the purpose of paying for such roads, or parts thereof, the commissioners shall issue bonds payable at such times, and in such amounts, as will be as near as practicable equal to the semi-annual collection of taxes levied for that purpose, which bonds shall bear interest at a rate not exceeding six per centum, payable semi-annually, which bonds may be delivered to such companies in payment of such roads, or parts thereof, or sold for money at not less than their par value, but such bonds shall not run more than eight years from date, and for the payment thereof the commissioners shall levy, annually, on all the taxable property of such counties, in addition to the taxes they are otherwise authorized to levy, such sum as will fully pay such bonds and the interest thereon. 78 O. L. 149.

§ 3501a (87 O. L. 335) provides that county commissioners may refund assessments made for construction of free turnpikes.

§ 3502. Fees—

Such appraisers shall be paid by the county, upon the allowance of the commissioners, three dollars per day, and their necessary expenses, for the time actually employed in the business of their appointment; and the county auditor and county treasurer, for their services under the preceding section, shall be entitled to one-half of the lowest rate of fees now allowed to them by law for like services.

§ 3503. Sale—

The sale by any company owning a toll road, or such part of such road as lies within any county, shall not affect its organization or right as to such part or parts of its road as may be situate outside of such county.

§ 3504. Not to affect creditors—

No relinquishment, sale or transfer herein provided for shall prejudice or affect, in any way, the claim of any creditor of the

company which makes the same, nor shall the provisions of the three preceding sections extend or be applicable to any road in which the state is interested as a stockholder. 54 v. 198, § 4; S. & S. 340.

§ 3505. Additional stock authorized—

The directors of any company may open books of subscription along the line of its road for the purpose of raising additional stock for the completion, extension, planking, or otherwise improving or repairing its road. 51 v. 395, § 1; S. & C. 334.

§ 3506. Companies may consolidate—

When two or more turnpike or plank road companies desire to consolidate themselves into a single corporation, they may do so in the manner, and subject to the rules, provided in this title for the consolidation of railroad companies. 50 v. 274, § 43; S. & C. 298.

§ 3507. May assist an extension—

The directors of any such company may subscribe and pay such sums of money as the majority of the stockholders instruct them to subscribe, to build and keep in repair any turnpike or plank road that is a continuation or extension of its road; but such subscription shall not exceed the net revenue of its road. 55 v. 160, § 1; S. & C. 340.

§ 3508. May assist an intersecting free turnpike—

The directors of any company may subscribe and pay such sums of money as they may think advisable to build and keep in repair any free turnpike road that intersects their road; but such subscription shall not exceed the dividends of their company, and three-fourths of the stockholders of the company must consent to the subscription. 52 v. 131, § 1; S. & C. 370.

§ 3509. Accounts each company must keep—

Every company shall cause to be kept a fair and accurate account of the whole expense of making its road, with the expense of toll-gatherers, and all other necessary agents or officers whom the company may find it convenient to employ, and a fair and accurate account of the amount of toll received; the books of every company shall always be open for the inspection of the

commissioners of any county through or into which it passes, or of the agent of the general assembly of the state, and of any stockholder; and if any company refuse or neglect to exhibit its accounts, agreeably to the provisions of this section, when required to exhibit them by such commissioners or agent, all the rights granted by this chapter, and its rights to be a corporation, shall cease and determine. 50 v. 274, § 40; S. & C. 297.

§ 3510. The books a company must keep—

The directors of each company shall cause books to be kept, in which shall be entered all the transactions of the company, with the dates of such transactions; also stock books, in which shall be entered the names of the stockholders, the number of shares of stock owned by each, and all transfers of stock made during each year, and by and to whom made; on the first Monday of January of each year the directors shall cause a statement to be made in such stock books, showing the names of the owners of the stock of the company, and the respective number of shares held by each; and all books herein provided for shall, at all proper times, be open to the inspection of any stockholder. 65 v. 89, § 1; S. & S. 146.

§ 3511. Toll-gate keepers must report—

A keeper of a toll-gate shall, on the first Monday of January of each year, and at such other times as may be required by the company, make a report in writing, under oath, showing the amount of toll received at each gate respectively for the preceding year, the amounts paid to the company from time to time, the amounts retained on account of salaries of gate-keepers, the amount of tolls outstanding and uncollected, and also who and to what amount persons have passed through such gates without paying tolls, and by whose orders such persons have so passed; and all such statements shall be submitted to the stockholders at their annual meeting on the second Monday of January of each year. 65 v. 89, § 2; S. & S. 147.

§ 3512. Directors' annual report to stockholders—

The directors of each company shall cause to be made, in writing, and submitted to the stockholders of the company, at the regular meeting of the stockholders on the second Monday of January of each year—notice of which meeting shall be given by the di-

rectors, by publication, for four consecutive weeks, in a newspaper printed and of general circulation in each county in which any part of the road is situate—a report of the transactions of the company for the year next preceding, which report shall show the amount of revenue received by the company from all sources during the year, and the amount of tolls received at each gate respectively; also a statement in detail of all the items of expenditure of the company, for all purposes, including the amount expended on each mile of the road respectively, the amount paid to each officer of the company for his services, the amount paid to gate keepers for salaries or otherwise, and the amount of money on hand after paying expenses of the company; also a statement of the outstanding liabilities of the company, and to whom owing, and of the amounts due to the company, and by whom owing, and how secured; and the directors shall order a dividend to be made of the money then on hand, unless otherwise ordered by a majority of persons present at such meeting owning stock in the company. 65 v. 89, §§ 3, 5; S. & S. 147.

§ 3513. Treasurer to hold no other office in company—

The treasurer of a company shall hold no other office in the company, and when appointed, and before assuming the duties of his office, he shall take an oath of office, and give bond, with security to the satisfaction of the board of directors, conditioned for the faithful performance of his duties according to law. 65 v. 89, § 4; S. & S. 147.

§ 3514. Toll gate keeper the agent of the company—

The keeper of a gate on any turnpike or plank road shall be deemed and held to be the agent of the company or person owning the road; and judgment obtained against any such gate keeper for a violation of this chapter shall be considered and held to be a judgment against the company or person owning the road, and execution may issue thereon accordingly against the gate keeper and such company or person. 59 v. 101, § 4; S. & S. 150.

§ 3515. Obstructing fences removed—

If a person whose fence is upon, or who erects a fence upon, the limits of a turnpike or plank road, or who places within the

limits of such road any wood, stone, or other obstruction, other than permanent buildings already constructed, so as to interfere with the public travel upon such road, or prevents or interferes with the free passage of water in the side drains or ditches of such road, upon being notified by the president, a director, or the superintendent of such road to remove such fence or other obstruction, neglect or refuse to comply with such requirement within ten days from the service of such notice, he shall forfeit and pay to and for the benefit of the company owning such road a sum not less than one nor more than ten dollars, for each and every day he permits such fence or obstruction to remain upon such road after the expiration of ten days from the service of such notice; which sum shall be recoverable by action in the name of the company, before any justice of the peace of the township where the fence is situate or the obstruction placed. 58 v. 43, § 1; S. & S. 150.

§ 3516. Company may assess stockholders—

When the stockholders of a turnpike or plank road company are individually liable for the liabilities of such company, the proportion that each stockholder shall be required to pay to meet existing liabilities may be determined and collected in the manner hereinafter provided. 53 v. 99, § 1; S. & C. 338.

§ 3517. Notice of meeting for that purpose—

The directors of any such company, desiring to take such action, may give notice to the stockholders, by publication for at least thirty days in at least two newspapers published in the counties in which the road is located, for a meeting of the stockholders, specifying the time and place of meeting, and the object thereof. 53 v. 99, §§ 2, 7; S. & C. 338.

§ 3518. Proceedings thereat—

At such meeting a detailed statement shall be submitted, showing the assets and indebtedness of the company; and a majority of the stockholders may there determine upon the basis for assessing the stockholders to meet the indebtedness of such company, and fix the time or times, and the mode, for the payment of the amount assessed against each individual or corporation. 53 v. 99, §§ 3, 4; S. & C. 338.

§ 3519. Collection of assessments—

No stockholder shall be liable beyond the sum fixed by the charter of such company, and all assessments, when paid, shall be a credit on his liability, and a stockholder who fails to pay, as required, the amount so assessed, shall be liable to an action in the name of the company for the recovery thereof, as in other cases of indebtedness. 53 v. 99, §§ 5, 6; S. & C. 338.

§ 3520. Those assessed for improved roads may become incorporated—

When a majority of the landholders whose lands have been or hereafter may be assessed to construct a road by virtue of proceedings had under the act of March 29, 1867, and the acts supplementary thereto and amendatory thereof, desire to incorporate themselves into a turnpike company, they may proceed in the manner provided in chapter one; but in their articles of incorporation they shall also state that the road has already been constructed under and by virtue of said act, and the amount of capital stock of the company shall be, as near as the same can be arrived at, the amount expended in the construction of the road; and there shall be annexed to the articles of incorporation a petition, asking for the incorporation of the persons named in the articles of incorporation, for the purposes therein named, which petition must be signed by a majority of the landholders whose lands have been taxed for the making of the improvement, accompanied by a certificate of the auditor of the county in which the road is located to the effect that the petition contains the signatures of a majority of the landholders whose lands have been so taxed. 66 v. 131, § 16.

§ 3521. Who to be stockholders—

No stock books shall be opened, and no subscriptions received to the stock of such company; the auditor of the county in which any road is located shall, on demand, furnish to the corporators a certified list of the landholders whose lands have been taxed for the construction or improvement of the road; and at the first election of directors and officers of the company each person whose lands have been so assessed shall be entitled to one vote, and no more. 66 v. 131, § 17.

§ 3522. Certificates of stock to be issued—

After the company is organized, its president and secretary shall issue certificates of stock to each landholder, for the number of shares of the stock, of the sum which may be designated by the directors, and fractions of a share, as shall amount to the sum assessed upon his lands, and which he has already paid for making the improvement; and they shall also, from time to time, after the assessment on each landholder each year is paid, issue like certificate for the amount of the assessments so paid; but any person whose lands have been assessed, and whose assessments have been paid, may, at any time after the organization of the company, become a stockholder therein, by producing and exhibiting to the secretary of the company the certificate of the auditor and treasurer of the county, showing the amount of the assessment on the lands of such person for the improvement, and that the same has been paid, and thereupon the president and secretary shall issue certificates of stock to him for the amount so paid. 72 v. 172, § 18.

§ 3523. Powers of such companies—

A company so incorporated shall have the same powers and be subject to the same liabilities as other turnpike companies incorporated under the laws of the state. 66 v. 131, § 19.

§ 3524. When such company may increase capital stock—

A company organized as provided in section *thirty-five hundred and twenty* may, with the assent of the holders of a majority of its stock, and the consent of the county commissioners, increase its capital stock to such an amount as may be deemed necessary to extend its road or to build a branch road, not exceeding five miles in length, to form a connection with any other similarly improved road in an adjoining county or state. 69 v. 191, 1.

§ 3525. Proceedings for such purpose—

For the purpose of increasing the capital stock of the company for the objects heretofore stated, books may be opened for subscriptions, under the direction and at the office of the auditor of the county in which the company is located, upon giving thirty days' previous notice in some newspaper published and of general circulation in the county; and all persons, whether original stock-

holders or otherwise, may become subscribers to the capital stock of the company; but the aggregate of such subscriptions shall not exceed the amount necessary to construct or build such road or branch; and if a company so organized refuse its assent to such extension, or to the construction of such branch road, for the purposes stated, or refuse, by the vote of the holders of a majority of its stock, to increase its capital stock for such purposes, a stock company may be organized under chapter one, which may build such extension or branch, and erect toll-gates, as provided in this chapter. 69 v. 191, § 1.

§ 3526. Company may divide its road—

A company whose road extends into two or more counties may subdivide its road into as many divisions as it may determine, as hereinafter provided, and may reorganize the company, so as to have a separate corporation for each of the subdivisions. 75 v. 527, § 1.

§ 3527. Proceedings to effect subdivision—

For the purpose of making such subdivision there shall be a meeting of the stockholders of the company, at the usual place of meeting, on a notice of at least four weeks, and if at such meeting the owners of at least two-thirds of the stock of the company assent thereto, in writing, the subdivision shall be made, and the stock of the entire corporation shall be apportioned among the several new corporations as previously agreed upon; each subdivision shall be liable for its proportion of the debts of the original corporation, in proportion to its stock; and the action of the stockholders' meeting shall be duly recorded, and when attested by the president and secretary of the meeting, a copy thereof, duly certified by the president and secretary, shall be filed with the secretary of state, and shall become the articles of incorporation for each of the subdivided companies, and shall be recorded as other articles of incorporation are recorded. 75 v. 527, § 2.

§ 3528. Reorganization of separate companies—

After the certificate is filed with the secretary of state, each of the subdivisions shall become a separate corporation, and reorganize as such by the election of a board of directors as other turnpike companies, and thenceforth each of the companies shall

have the same powers, and be conducted in all respects, as other companies; and the rights of stockholders in each subdivision to their stock and property shall remain and continue therein as if they had been the sole stockholders in the subdivision prior to the subdivision, subject, however, to the same liabilities of stockholders for debts of the corporation and legislative control as other companies. 75 v. 527, § 3.

§ 3529. Names of new companies—

The name of each of the companies of such subdivided corporations shall be such as may be assumed and designated in the certificate of incorporation. 75 v. 527, § 4.

§ 3530. Roads may be sold on execution—

All turnpikes and plank-roads under the control of individuals or corporations, and held as property or as a franchise shall be liable to sale upon execution, in the same manner as other property. 65 v. 136, § 1; S. & S. 238.

§ 3531. The levy and appraisement—

All such property shall be levied upon, appraised and sold as real estate is appraised and sold; and the appraisement shall be made with reference to the value thereof for the purposes for which it is or may be used, and shall include the value of the franchise therewith connected. 65 v. 136, § 2; S. & S. 238.

§ 3532. When order for appraisement made—

When any such property is levied upon and not appraised, and when portions of such property are situate in two or more counties, the court in which the judgment was rendered may, upon application of the creditor, order the same to be appraised, appoint appraisers, and have the same sold entire, or in such parcels as the court may deem most advantageous to the debtor; but if no such application be made, the sheriff shall proceed as in other cases. 65 v. 136, § 3; S. & S. 238.

§ 3533. Purchaser takes franchise—

The purchaser of any such road shall, upon the confirmation of the sale, be entitled to hold and exercise all the corporate franchises purchased at such sale, as fully as the same were held

and exercised by the debtor before such sale, in any name assumed by the purchaser. 65 v. 136, § 4; S. & S. 238.

§ 3534. Transcript to be filed with secretary of state—

Upon the filing with the secretary of state of a duly attested copy of the sale, confirmation and conveyance of any franchise as is herein provided for, such transfer shall be recorded in the same manner that original articles of incorporation are recorded; and thereupon the franchise shall vest absolutely in the purchaser, in the same manner as franchises vest in original corporators upon the recording of the certificate of incorporation. 65 v. 136, § 5; S. & S. 238.

§ 3535. When right to take toll may be sold on execution—

When a judgment has been heretofore or is hereafter rendered against any turnpike, plank-road or bridge company, and remains unsatisfied for ten days after the rendition thereof, execution may issue thereon against the goods and chattels of the company, which shall be levied upon and sold as in other cases; if sufficient goods and chattels cannot be found to satisfy such execution, the officer holding the same may, if the judgment creditor so direct, levy upon the right of the company to take toll at any of its gates within the jurisdiction of the officer, which right the officer shall advertise and sell as personal property; and the person who will pay the amount due upon the execution for the right of using such gate or gates, and of taking toll at the same, for the shortest time, shall be the purchaser; but nothing herein contained shall be so construed as to deprive the company of the same right to give bail for stay of execution, within the same time after the rendition of a judgment that an individual might have. 76 v. 49, § 1.

§ 3536. Certificate of such sale, and its effect—

The officer who makes sale of the right to take toll at any gate as aforesaid shall give to the purchaser a certificate thereof, which certificate shall be sufficient to authorize him to take possession of such gate and to hold the same during the time for which the same was sold; the purchaser shall have the full right to demand and receive the same tolls of and from all passengers passing

through such gate as have been established and posted up by such company according to law; and during the possession thereof the purchaser, or his agent, shall conform to all rules, regulations, and contracts of the company, in the same manner as required of the gatherers of toll of the company, except that he shall hold for his own use all tolls collected at such gate for and during the time for which he purchased the same, and shall keep such part of the road in as good repair, so long as he holds the same under such contract, as when possession was taken thereof, ordinary wear and travel excepted. 76 v. 49, § 2.

Secs. (3536, 1 and 2), see note to sec. 3822.

BRIDGE COMPANIES.

SECTION.

- 3537. Powers of bridge companies.
- 3538. Must post rates of toll.
- 3539. Rates of toll allowed.
- 3540. May make and enforce regulations.
- 3541. Powers of Ohio river bridge companies.
- 3542. Further powers of such companies.
- 3543. Rates of toll prescribed.
- 3544. May lay railroad tracks on bridge.

SECTION.

- 3545. Mortgage of franchises and sale of obligations.
- 3546. Railroad companies may subscribe to stock.
- 3547. Consolidation of companies.
- 3548. May change span or height of bridge.
- 3548a. Power to borrow money.
- 3549. May own and run certain ferries; rates of ferriage.

§ 3537. Powers of bridge companies—

A company incorporated to construct a bridge over any stream of water in this state shall either own the bank on each side of the stream where it is proposed to erect its bridge, or obtain the consent of the owner or owners thereof, in writing, to occupy the same; it may purchase or appropriate in the manner provided by law and hold, such real estate as will be required for the site of the bridge, and suitable avenues or approaches leading thereto, may use so much of any public street, road or avenue, as is necessary for landings and abutments, and may appropriate in the manner provided by law any rights or franchises necessary in the construction of the bridge; and the provisions of section *thirty four hundred and ninety-two* shall be applicable to such companies. 69 v. 185, § 55; 53 v. 180, § 1; S. & C. 338.

§ 3538. Must post rates of toll—

Such company, previous to receiving tolls upon its bridge, shall set up and keep in a conspicuous place thereon a board, on which

shall be written, painted, or printed, in a plain and legible manner, the rates of toll which are charged thereat; and if its charter provides that such rates shall be prescribed by the court of common pleas of the proper county, and the company demand and receive any greater rate of tolls than the rate so prescribed, it shall be subject to a fine of ten dollars. 50 v. 274, § 61; S. & C. 301.

The posting of the rates of toll is a condition precedent to the right to exact tolls; but the casual interruption, by violence or otherwise, for a short period, in keeping up the rates of toll, would not deprive the company of any right, provided it had once performed the duty imposed by the statute, and were guilty of no unreasonable delay in keeping within its provisions. *Bonham v. Taylor*, 10 Ohio, 108.

§ 3539. Rates of toll allowed—

Any company authorized by its charter to take tolls above the rates hereinafter provided may charge and receive the following rates of toll, and no more: For each foot passenger, one cent; for each horse, mule, or ass, one year old and upward, three cents; for each horse and rider, ten cents; for every chaise, chariot, gig, or other two or four-wheeled pleasure carriage, drawn by one horse, fifteen cents; for every such vehicle, drawn by two horses, twenty-five cents, and if drawn by four horses, thirty cents; for every sled or sleigh, drawn by one horse or other animal, ten cents, and for each animal in addition, three cents; for every wagon, drawn by one horse or other animal, ten cents, and for each animal in addition, three cents; for every wagon drawn by two horses or other animals, fifteen cents, and for each animal in addition, three cents; for each head of neat cattle, six months old or upward, one cent; and for each head of sheep, goats, or hogs, one-half cent; but this section shall not be construed to affect any company in whose charter special rates are provided, and no power is given to the legislature to alter or amend the same. 54 v. 177, § 1; S. & C. 352.

§ 3540. May make and enforce regulations—

All bridge companies and owners are invested with full power and authority to make and enforce any rule or regulation deemed necessary or requisite to preserve and protect their property and collect their tolls, and may prevent any person from crossing any bridge owned by them on foot, or by riding, or driving any

team or vehicle, or from driving any stock thereon, who fails to pay the regular fare when demanded; and the police or watchman of any such bridge shall have all the power and authority of policemen of cities, and may arrest any person who violates the law, or the rules of the company or person owning the bridge, without warrant, at or upon such bridge, and take him before the proper civil authority to be dealt with according to law. 64 v. 128, § 5; S. & C. 57.

§ 3541. Powers of Ohio river bridge companies—

A company organized to construct a bridge over the Ohio river may construct and maintain such bridge, with suitable avenues or approaches leading thereto, and with either a single span or a draw, as the company may determine; but in either case, in order that the bridge may not obstruct the navigation of the river, the same shall be built in accordance with the provisions of an act of congress, approved July 14, 1862, entitled "an act to establish certain post roads," or of any act of congress subsequently passed on the subject. 65 v. 55, § 4; S. & S. 203.

§ 3542. Further powers of Ohio river bridge companies—

Such company may purchase, or appropriate in the manner provided by law, and hold such real estate as, in the opinion of its directors, will be required for the site of the bridge, and of suitable avenues or approaches leading thereto, and may locate the same on, or construct the same over, any public street, road avenue or alley; provided, that in constructing the same over any public street, road, avenue or alley, the said bridge shall be constructed at such height as not to interfere with travel passing on, over or along the same; and provided further, that no pier, or other obstruction, shall be constructed or built upon such street, road, avenue or alley without the consent of the municipal or other authorities having charge or control of the same. And the company shall be responsible for injuries done to private property, adjacent or near to such bridge, by its elevation and construction, which may be recovered in a civil action brought by the owner, at any time within two years from the completion thereof. 86 O. L. 25.

§ 3543. Rates of toll prescribed—

The company may fix and collect reasonable rates of toll for

all persons, animals, vehicles and property passing or transported over the bridge; but such rates shall at no time exceed those collected at the Covington and Cincinnati bridge; and the company shall set up and keep in a conspicuous place, at each end of the bridge; a board on which the rates shall be written, painted or printed in a plain and legible manner. 65 v. 55, § 6; S. & S. 203.

§ 3544. May lay railway tracks on bridge—

The company may lay down a railway track or tracks upon the bridge and its approaches, and may contract at any agreed sum or rate, with any railroad company organized in this state in accordance with law, or any railroad company organized in any other state of the United States, for the use of the bridge, for the purposes of such railroad company; and any such railroad company organized in this state may enter into such contract with the bridge company, but the bridge company shall not have the right to charge or collect from the railroad company for the use of the bridge in the transportation over the same of cars, railroad passengers, and freights, a greater toll than the following: For each ton (two thousand pounds) of freight not exceeding fifteen cents; for each passenger not exceeding fifteen cents; for each passenger, baggage, mail or express car, not exceeding one dollar; for each eight-wheeled freight car fifty cents, and for each four-wheeled freight car not exceeding twenty-five cents. 65 v. 55, § 7; S. & S. 203.

§ 3545. Mortgage of franchises and sale of obligations—

The company may include all its rights, income, profits and franchises in any mortgage it may lawfully make, and upon a foreclosure of a mortgage of its bridge, land, and franchises, and a sale thereof, such sale shall pass to the purchaser the corporate franchises of the company as fully as the company had them at the time the mortgage was executed; and the company may dispose of any evidence of indebtedness it may lawfully issue as is provided in section *thirty-two hundred and ninety*. 65 v. 55, § 8; S. & S. 204.

§ 3546. Railroad companies may subscribe to stock—

Any railroad company or other private corporation, organized under a law of this state, may become a subscriber to the capital

stock of such bridge company, to an amount not exceeding one-third of such stock, or may purchase, or take by way of pledge, any of the bonds or other evidences of indebtedness issued by it. 65 v. 55, § 9; S. & S. 204.

§ 3547. Consolidation of companies—

Such bridge company shall have the right to consolidate its capital stock with the capital stock of any bridge company in an adjoining state authorized to construct a bridge across the Ohio river, in the manner prescribed for the consolidation of railroad companies, and the two companies shall thereupon be merged into one corporation, possessing within this state all the rights, privileges, and franchises, and subject to all the restrictions, disabilities and duties of such corporation of this state so consolidated. 65 v. 55, § 10; S. & S. 204.

§ 3548. May change span or height of bridge—

Such company may fix or change the span and altitude of any bridge which it may erect and construct, but the span shall not be less than three hundred feet in the clear over the main channel, and not less than two hundred and twenty feet in the clear in one of the next adjoining spans, and the height of the bridge in the center of the span over the main channel shall not be less than one hundred feet above the surface of the water at low water-mark, measuring for such elevation to the bottom chord of the bridge, and such height above extreme high water-mark as may be provided in any act of congress now in force or hereafter passed; but this section shall not apply to any bridge built with a draw in accordance with the provisions of an act of congress approved July 14, 1862, entitled "an act to establish certain post roads," or any act of congress subsequently passed on the subject. 65 v. 55, § 11; S. & S. 204.

§ 3548a. May borrow money for construction or maintenance of avenues or approaches—

Any company which has heretofore constructed any bridge across the Ohio river may construct, extend and maintain avenues or approaches thereto beyond the point where the same are now or are by law authorized to be constructed, and, in the construction and maintenance of such avenues and approaches, may exercise all the rights, powers and privileges now conferred on

bridge companies by the laws of the State of Ohio, and may borrow money and secure the payment of the same as is provided in section *thirty-two hundred and fifty-six* of the Revised Statutes. 91 O. L. 279.

§ 3549. May own and run certain ferries—Rates of ferriage—

Such companies may purchase, hold, and receive grants for, and run ferries within one-half mile of such bridges across said river, and do and perform all the necessary acts in relation thereto, but the rates of ferriage shall be subject to the control of the authorities as in case of ferries owned and run by individuals. 66 v. 136, § 2.

GAS AND WATER COMPANIES.

SECTION

- 3550. Powers of gas and water companies.
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- 3551. May contract with public authorities.
- 3552. Gas company may extend pipe beyond city.
- 3553. Standard measure for gas.
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SECTION

- 3557. What is merchantable gas.
- 3558. Agents of company may enter premises to inspect meter.
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- 3561. Each company to provide certain apparatus.
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§ 3550. Powers of gas and water companies—

A company organized for the purpose of supplying gas for lighting the streets and public and private buildings of a city, village, town, or township, may manufacture, sell and furnish the gas required therein for such or other purposes, and a company organized for the purpose of supplying the inhabitants of a city, village, town, or township, with water may sell and furnish any quantity of water required therein for such or other purposes; and such companies may lay conductors for conducting gas or water through the streets, lands, alleys and squares in such city, village, or town, or township, with the consent of the municipal authorities of the city, village, or town, or with the consent of the trustees of the township, and under such reasonable regulations as they may prescribe. 64 v. 255, § 53; S. & S. 157.

For full provisions relating to regulation of gas companies by municipal council and ownership of gas-works by city, see Rev. Stat., secs. 2478 to 2491.

Ordinance regulating price of gas is a proposition to gas company to supply at price named. *State v. Gas Co.*, 37 Ohio St. 45.

Corporation under special charter is subject to legislative control as to prices unless charter clearly makes it exempt. *State v. Gas Co.*, 34 Ohio St. 572.

Council of Cleveland may regulate price of gas in that city—facts stated which do not constitute a contract limiting such power. *State of Ohio v. Cleveland Gas Light and Coke Co.*, 3 C. C. 251.

Where it is the duty of company to furnish gas to a city at prices fixed by ordinance under section 2478, it may be compelled to do so by mandatory injunction. *Gas Light Co. v. Zanesville*, 47 Ohio St. 35.

For construction of contract to sell gas at "averaged price," see *Cincinnati v. Gas Light & Coke Co.*, 53 Ohio St. 278.

A company incorporated to construct water-works for supplying a municipality with water, is not invested with power of eminent domain. *State v. Salem Water Co.*, 5 C. C. 58.

For construction of sections 3550 and 3551 upon subject of electric lighting and powers of companies, see *Brush Electric Light Co. v. Jones Bros. Electric Co.*, 23 B. 329, and 5 C. C. 340, affirmed in 29 B. 72.

A private corporation for selling and transporting natural gas for fuel, can not, under an ordinance, lay pipes in streets without permission of and compensation to holders of the fee in the street. Laying such pipes subjects the street to additional burden and servitude. *Webb v. Ohio Gas Fuel Co.*, 16 B. 121 (C. P.).

City may change grade of street when necessary after pipes are laid, is not liable for damage caused by necessity of taking up and relaying pipes in order to accommodate them to the new grade. *Gas Light & Coke Co. v. Columbus*, 50 Ohio St. 65.

Exclusive right to lay pipes cannot be granted to one company. *Newark Gas Co. v. Newark*, 7 N. P. 76 (C. P.).

§ 3550a. Gas and gas light and coke companies vested with powers, privileges and franchises of electric light companies in Cincinnati—

In cities of the first grade of the first class gas companies and gas light and coke companies organized under the laws of this state for the purpose of manufacturing and supplying gas for lighting the streets and public and private buildings and places, shall have, in addition to the powers already conferred, all the powers, privileges and franchises of electric light companies to construct, maintain and operate electric light plants and stations, with all fixtures and appliances necessary for furnishing electric light, heat and power to such cities and the inhabitants thereof;

and such companies may lease or purchase, maintain and operate existing electric light plants and stations, together with all the fixtures, appliances, equipments and all other property thereunto belonging, including the capital stock, rights and franchises of any existing company or companies, person or persons, owning the same. 90 O. L. 291.

§ 3551. May contract with public authorities—

The municipal authority of any city or village, or the trustees of any township, in which any gas or water company is organized, may contract with any such company for lighting or supplying with water the streets, lands, lanes, squares and public places in such city, village, town or township, but no such company shall go into operation in any city or village where such a corporation has already been formed, or is hereafter formed, until after the question of authorizing such operation has been submitted to the qualified voters of such city or village, and authorized by ordinance. 71 v. 93, § 54.

A company already organized and in operation, after vote by the people, can make contract to furnish the city with gas, without another vote—this section applies only to formation of another company. *Lima Gas Co. v. City of Lima*, 4 C. C. 22.

Although a city theretofore taken gas from a company which has complied with all its duties, such city may cease taking gas, and erect gas-works, or purchase works already erected, whenever expedient and for the public good. *State v. City of Hamilton*, 47 Ohio St. 52.

§ 3552. Gas company may extend pipes beyond city—

A gas company in any city or village may extend its pipes used for conveying gas to the various localities and inhabitants of such city or village, to any point or place in the vicinity of such city or village outside the corporate limits thereof; but the right of way must be obtained from the corporate or other authorities, or person having control of the places to be affected by such extension. 56 v. 92, § 1; S. & C. 351.

See *Cincinnati Gas Co. v. Avondale*, 43 Ohio St. 257, for construction put upon facts given.

§ 3553. Standard measure for gas—

The standard or unit of measure for the sale of illuminating gas by meter shall be the cubic foot, containing sixty-two and

three hundred twenty-one one-thousandth pounds avoirdupois weight of distilled or rain water, weighed in air, of the temperature of sixty-two degrees Fahrenheit's scale, the barometer being at twenty-nine and one-half inches. 63 v. 164, § 5; S. & S. 159.

§ 3554. Meter must be sealed and stamped—

No meter shall be set unless it is tested by a meter-prover, sealed and stamped, as provided in section *thirty-five hundred and fifty-six*; and any company authorizing the setting of a meter, or allowing the same to be used by any consumer of gas, without being so sealed and stamped, shall forfeit and pay not less than twenty-five nor more than one hundred dollars, to be recovered upon the complaint of any such consumer, in the name of the state, before any court of competent jurisdiction. 64 v. 39, § 6; S. & S. 161.

§ 3555. Gas companies to furnish certain apparatus—

There shall be provided, at the expense of the gas companies of this state, at the office of the secretary of state, a standard measure of the cubic foot, and such other apparatus as in his judgment shall be necessary for the performance of his duties under this chapter. 63 v. 164, § 7; S. & S. 159.

§ 3556. How and when meters in use to be tested—

Meters in use shall be tested on the request of the consumer, in his presence if desired, with a meter-prover tested and sealed as provided in section *thirty-five hundred and sixty-one*, by an officer or servant of the company; if the meter be found to be correct, the party requesting the inspection shall pay a fee of twenty-five cents, and the expense of removing the same for the purpose of being tested, and the re-inspection shall be stamped on the meter; if proved incorrect, no fees or expenses shall be paid by the consumer, and the company shall furnish a new meter without any charge to the consumer; and no gas company shall have the right to charge rent for meters. 64 v. 39, § 9; S. & S. 161.

§ 3557. What is merchantable gas—

Illuminating gas shall not be merchantable in this state which has a minimum value of less than twelve candles—that is, a

burner consuming five cubic feet per hour shall give a light, as measured by the photometric apparatus in ordinary use, of not less than twelve standard sperm candles, each consuming one hundred and twenty grains per hour; and every gas-meter must be tested with the burner, and under the pressure best adapted to it and the result shall be calculated at a temperature of sixty degrees Fahrenheit. 64 v. 39, § 10; S. & S. 162.

§ 3558. Agents may enter premises to inspect meter—

An officer or servant of a gas company, duly authorized in writing by the president, treasurer, agent, or secretary, of the company, may, at any reasonable time, enter any premises lighted with gas supplied by such company, for the purpose of examining or removing the meters, and of ascertaining the quantity of gas consumed or supplied; and if any person, at any time, directly or indirectly, prevent or hinder any such officer, or servant from so entering any such premises, or from making such examination or removal, such officer or servant may make complaint, under oath, to any justice of the peace of the county wherein such premises are situate, stating the facts in the case, so far as he has knowledge thereof, and the justice may thereupon issue a warrant, directed to any constable of the city or town where such company is located, commanding him to take sufficient aid, and repair to such premises, accompanied by such officer or servant, who shall examine such meters, and ascertain the quantity of gas consumed or supplied therein, and, if required, remove any meters belonging to the company. 63 v. 164, § 11; S. & S. 159.

§ 3559. When company may shut off gas—

If any person so supplied with gas neglect or refuse to pay the amount due for the same, or for the rent of the meter, or other articles hired by him of the company, the company may stop the gas from entering the premises of such person; in such cases the officers, servants, or workmen of the gas company may, after twenty-four hours' notice, enter the premises of such parties, between the hours of eight in the forenoon and four in the afternoon, and take away such meter, or other property of the company, and may disconnect any meter from the mains or pipes of the company; and no gas company shall have the right to refuse to furnish gas on account of any arrearages due the company for

gas furnished to former occupants of the same premises. 53 v. 164, § 12.

§ 3560. Penalties for tampering with meters—

Every person who willfully or fraudulently injures, or suffers to be injured, any meter belonging to any gas company, or prevents any meter from duly registering the quantity of gas supplied through the same, or in any way hinders or interferes with its proper action or just registration, or attaches any pipe to any main or pipe belonging to such company, or otherwise burns, or uses, or causes to be used, any gas supplied by such company, without the written consent of an officer thereof, unless the same passes through a meter set by the company, or fraudulently burns the gas of the company, or wastes the same, shall, for every such offense, forfeit and pay to the company not more than one hundred dollars, to be recovered in an action brought by the company against such offender, and in addition thereto, shall pay the company the amount of damage by it sustained by reason of such injury, prevention, waste, consumption, or hinderance. 63 v. 164, §§ 13, 14; S. & S. 160.

§ 3561. Each company to provide certain apparatus—

All gas companies supplying the public with illuminating gas which are not supplied with such apparatus, shall forthwith provide for their use a meter prover, the holder of which shall contain not less than five feet, the same to be tested, stamped, and sealed in the secretary of state's office before being used, and a photometer for the comparison of the lights of gases and candles by means of a disk. 73 v. 227, § 3.

§ 3561a. Laws made applicable to natural gas companies in certain cities—

The provisions of this chapter, so far as the same may be applicable, shall apply also to any company organized for the purpose of supplying the public and private buildings and manufacturing establishments of all cities of the third grade of the second class, having a population not exceeding 16,000 at [the] federal census of A. D. 1880, with natural gas for fuel; but said company shall be liable for any damage that may result from the transportation of the same; provided the township trustees shall not assent to the laying down of any line of pipes in any town-

ship of this state, as provided in sections *thirty-five hundred and fifty* and *thirty-five hundred and fifty-one*, until the company or corporation proposing to lay the same shall obtain the assent, in writing, of a majority of the land-owners whose lands may be adjacent to the road or highway upon which said line of pipes or conductors are to be laid. 82 O. L. 213.

This does not authorize a company organized under prior statutes for manufacturing and furnishing gas, to substitute natural gas. Findlay Gas Light Co. v. Village of Findlay, 2 C. C. 237.

HYDRAULIC COMPANIES.

SECTION

- 3562. May enter upon land for survey.
- 3563. When and for what purpose may appropriate land.
- 3564. Certain companies relieved from cause of forfeiture.
- 3565. May borrow money and make mortgage.

SECTION

- 3566. Companies may consolidate.
- 3567. Notice of meeting for such purpose.
- 3568. Proceedings at the meeting.
- 3569. When water may be drawn from canals.
- 3570. Certain provisions of chapter five applicable.

§ 3562. May enter upon land for survey—

A company incorporated under the laws of this state for hydraulic or manufacturing purposes, to which the board of public works, for a stipulated revenue, has leased and granted, or may hereafter lease and grant, the right to use and employ the surplus water of any of the public canals of this state, for propelling the machinery of such company, may enter upon any land upon or across which it may be desired to build, excavate or construct its hydraulic canal, race-ways or water-channel, for conveying and discharging such surplus water to and from the point at which it is desired to employ the same, and survey the route thereof. 63 v. 147, § 1; S. & S. 172.

§ 3563. May appropriate land—

Such company may appropriate so much of the land as it may deem necessary for its canals, race-way or water-channel, with the necessary culverts, waste-weirs, aqueducts, water-gates, abutments and fixtures, and the right of way over adjacent lands sufficient to enable it to construct and repair the same, if the probate court, in the proceedings instituted for that purpose, find that the erection and operation of its proposed works will be

subservient to the public welfare. 63 v. 147, §§ 2, 3, 4; S. & S. 172, 173.

§ 3564. Certain companies released from cause of forfeiture—

All hydraulic companies incorporated and organized before March 23, 1866, which became liable to a judgment of ouster from their corporate franchises, by reason of a non-user thereof for five or more years, but against which no proceeding to obtain such judgment had been commenced, and which had resumed and were then in the bona fide exercise of their franchises, are relieved from such cause of forfeiture, and no judgment for that cause shall be rendered against them, or either of them. 63 v. 50, § 1; S. & S. 173.

§ 3565. May borrow money and make mortgage—

Any hydraulic company may, for the purpose of repairing, completing or extending its works, borrow money to an amount not exceeding one-half of its capital stock actually paid in, and may secure the payment of the money so borrowed by the issue of bonds or notes, bearing interest not to exceed the rate authorized by law, and secured by mortgage on its real estate, or any part thereof; but such bonds or notes shall not be issued without the assent in writing of the holders of a majority of the stock in the company. 70 v. 160, § 1.

§ 3566. Companies may consolidate—

Any hydraulic company, now or hereafter organized under the laws of this state, may consolidate with any other hydraulic company in this or any adjoining state, when the works of such companies are connected or proposed to be connected, which consolidation shall be by an agreement of the corporations, duly ratified by a vote of the holders of two-thirds of the stock of each of the companies; when so consolidated the companies shall constitute one company, and take such name as the agreement shall designate; if both are organized under the laws of this state, the consolidated company shall possess all the rights, privileges and franchises of each of the corporations parties in the agreement, and if one is organized under the laws of any other state, the consolidated company shall possess all the rights, privileges and franchises of the company organized under the laws of this state, and in either case the consolidated company shall possess and hold all the property and rights of action, sub-

ject to all liens upon the respective property of each of the companies; and all debts, liabilities and duties of either of the companies shall henceforth attach to the new company, and may be enforced against it. 69 v. 177, § 1.

§ 3567. Notice of meeting for such purpose—

The notice of a meeting to take into consideration the agreement to consolidate, shall be given to the stockholders of such companies, by the secretaries of the respective companies, by publication in a newspaper printed and published in the county where such corporation is located, thirty days previous to such meeting, stating the object of the meeting; a printed copy of such notice shall be sent by the secretary of each company, by mail, to any stockholder whose residence is out of the county; and the publication and sending of such notice must be certified by the secretaries on their respective record books. 69 v. 177, § 2.

§ 3568. Proceedings at the meeting—

The stockholders at the meeting so called shall take into consideration the agreement to consolidate, and, after the adoption of the same shall appoint the time and place for the election of directors and other officers of the new corporation provided for in the agreement, a certified copy of which, and of the proceedings and vote on the consolidation, shall be certified by the officers of such meeting, under their seals, and be acknowledged by them before an officer authorized by law to take acknowledgment of deeds, and shall be forthwith filed in the office of the secretary of state; and a copy of the agreement and act of consolidation so filed in the office of the secretary of state, duly certified by him, shall be evidence of the existence of such consolidated company. 69 v. 177, § 3.

§ 3569. When water drawn from canals—

All canal companies and persons having oversight of any canal are prohibited from hereafter drawing off the water from such canal for the purpose of cleaning out the same, or making the general annual repairs thereof, and from allowing the water to remain out of the same, at any time between the thirtieth day of June and the thirtieth day of September in any year; and if any such company or person violate the provisions of this section, such company or person shall forfeit and pay to the state not less than five hundred nor more than three thousand dollars, to be recovered in a

civil action, before any court having jurisdiction thereof. 43 v. 17, § 1; S. & C. 225.

§ 3570. Certain provisions of chapter five applicable—

The provisions of chapter five for the foreclosure of a mortgage of a turnpike or plank'road, and the sale thereof upon such mortgage or upon execution, shall apply to the foreclosure of a mortgage of the canal of any company, and to the sale thereof on such proceedings or on execution. 54 v. 179, §§ 1, 2; S. & C. 339.

CEMETERY ASSOCIATIONS.

SECTION

- 3571. May acquire land not exceeding one hundred acres.
- 3572. Certain associations may acquire additional lands.
- 3573. When land may be appropriated.
- 3574. How receipts and income to be applied.
- 3574-1. Securing land for entrance.
- 3575. Sale of land.
- 3576. Plat of grounds and regulations.
- 3577. County commissioners may purchase road cemetery.
- 3578. Exemption of burial-grounds.
- 3579. May act as a soldiers' monumental association.*
- 3580. May appoint policemen.

SECTION

- 3581. Powers of associations in certain counties.
- 3581a. Power in certain other counties.
- 3582. How receipts, etc., applied.
- 3583. May accept certain trusts.
- 3584. When such corporation may hold land in village.
- 3585. Powers of certain corporations
- 3586. Rights of lot owners assured.
- 3586a. Rights and powers of crematory as association.
- 3586-1. Sale of cemeteries, and removal of remains.
- 3586-2. Notice of sale, etc.
- 3586-3. Power to create sinking fund.
- 3586-4. Investment of sinking fund.
- 3586-5. Expenditure of same.

§ 3571. May acquire land not exceeding one hundred acres—

A company or association incorporated for cemetery purposes may purchase, appropriate, or take by gift or devise, and hold, not exceeding one hundred acres of land, which shall be exempt from execution from taxation, and from being appropriated to any other public purpose, if used exclusively for burial purposes, and in no wise with a view to profit. 72 v. 113, § 5.

Such lands may be *assessed for street improvements*, and such charge may be enforced by other remedies, although not by sale of the lands. *Lima v. Cemetery Association*, 42 Ohio St. 128.

§ 3572. Certain associations may acquire additional land—

Any such company or association which is limited to the ownership, by appropriation or otherwise, of a designated number of

*Act.—Land may be held for soldiers' memorial association purposes, free from taxes.

acres of land for such purpose, may purchase, according to law; additional lands to the extent necessary for such purposes; but not more than fifty acres shall be purchased in any year, and not more in the aggregate shall be so purchased and held by any such company or association than one hundred acres. 74 v. 60, § 1.

§ 3573. Appropriation of land for cemetery purposes; location of cemetery—Cities third and fourth grade, second class—Provisions inapplicable to certain associations in Hamilton county.

If it be necessary to acquire any lands by appropriation, such proceedings shall be taken therefor as are provided for the appropriation of property to the use of corporations; but no lands shall be so appropriated until the probate court is satisfied that suitable premises can not be obtained by contract upon reasonable terms, and no lands shall be appropriated upon which there is any dwelling house, barn, stable or other farm buildings, or upon which there is any orchard or nursery, or any valuable mineral or other medicinal spring, or any well actually yielding oil, or salt water, unless the same shall adjoin a cemetery already located and used, on the same or opposite side of a public highway; nor shall any land be appropriated nor any cemetery located, whether it is being established by an association incorporated for cemetery purposes or by benevolent or religious societies, within two hundred yards of any dwelling-house, unless the owner of such dwelling house gives his consent, or unless the entire tract be so appropriated as a necessary addition to or enlargement of a cemetery already located and used; provided, however, that the limit shall not be less than one hundred yards where it is sought to appropriate for cemetery purposes property adjoining a cemetery already located and used, when such dwelling house has been erected subsequently to the laying out and establishing of such cemetery; but in cities of the third and fourth grade of the second class, where the cemetery lies within a municipal corporation, the association may, without such consent, appropriate property within one hundred feet, or the width of a street, of any dwelling house. The provisions of this section shall not be applicable to a corporation or cemetery association, owning a cemetery of less dimensions than five acres and situate within one mile of the corporate limits of any city of the first grade of the first class. 90 O. L. 103.

§ 3574. How receipts and income to be applied—

After paying for such land, all future receipts and incomes of such company or association, whether from sale of lots, donations, or otherwise, shall be applied exclusively to laying out, preserving, protecting, and embellishing the cemetery, and the avenues leading thereto, the erection of such buildings as may be necessary for the cemetery purposes, and to paying the necessary expenses of the cemetery company or association; no debts shall be contracted in anticipation of future receipts, except for original purchasing, laying out, inclosing, and embellishing the ground and avenues, for which a debt or debts may be contracted not exceeding ten thousand dollars in the whole, to be paid out of future receipts; and such company or association may adopt such rules and regulations as it may deem expedient for disposing of and conveying burial lots; but any person not already the owner of a lot in the cemetery shall have the right to purchase any lot not before sold by the company or association, and have it conveyed to him by the company or association, upon tender of the usual price asked therefor by it. 72 v. 113, § 5.

§ 3574-1. Manner of securing additional land for entrance to grounds owned by cemetery association—

Whenever in the judgment of the officers of any cemetery association within this state, it is necessary to secure additional land for the purpose of making an entrance to its grounds, or to improve an entrance already made said officers may make application to the county commissioners of the county in which said cemetery is located for the appointment of appraisers; the county commissioners shall, upon application being made to them, appoint three disinterested freeholders of the county as appraisers, whose duty it shall be to view the land sought to be obtained, and appraise its value, and make due return of said appraisement to the county commissioners; and when said cemetery association shall have made payment of the amount of said appraisement, together with the cost thereof, then the title to said land shall vest in said association; an appeal may be taken from the appraisement made by such appraisers to the probate court of the county in which such cemetery or such entrance may be located in manner provided in chapter 4, title 6, of the Revised Statutes. 90 O. L. 153.

For statutes providing for cemeteries owned by municipalities, and regulations, etc., of same, see Rev. Stat. §§ 2516 to 2558. For township cemeteries, § 1464 *et seq.*

§ 3575. Sale of lots—

Burial lots sold by such cemetery company or association shall be for the sole purpose of interments, shall be subject to the rules prescribed by the company or association, and shall be exempt from taxation, execution, attachment, or any other claim, lien, or process whatever, if used exclusively for burial purposes, and in no wise with a view to profit. 46 v. 97, § 6; S. & C. 227.

§ 3576. Plat of grounds; regulations—

Every such company or association shall cause a plat of its grounds and of the lots by it laid out, to be made and recorded, or filed in the recorder's office of the county in which situated; the lots to be numbered by regular consecutive numbers; it may inclose, improve and adorn the grounds and avenues, erect buildings for its use, prescribe rules for inclosing and adorning lots, and for erecting monuments in the cemetery, and prohibit any use, division, improvement, or adornment of a lot which it deems improper; and an annual exhibit shall be made of the affairs of the company or association. 85 O. L. 76.

§ 3577. County commissioners may purchase road to cemetery—

The county commissioners of the several counties may, on petition for that purpose by any turnpike road company, purchase so much of any turnpike road as lies between any city or village and any cemetery or public burying ground, and make the same a free road to such cemetery or burying ground, the cost of the same to be paid out of the county bridge fund; and so much of the road as is so purchased by the county commissioners shall be kept in repair by them, and the cost of such repairs shall be paid for out of the county general fund. 74 v. 40, § 1.

§ 3578. Exemptions of burial grounds—

Lands appropriated and set apart as burial grounds, either for public or private use, and so recorded or filed in the recorder's office of the county where the same are situate, or any burial-

ground that has been used as such for fifteen years, shall not be subject to sale on execution on any judgment, to taxation, to dower, nor to compulsory participation; but land so appropriated and set apart as a private burial ground shall not be so exempt if it exceed in value the sum of fifty dollars. 85 O. L. 76.

§ 3579. May act as soldiers' monumental association—

Any such company or association may act either as a soldiers' monumental or as a cemetery association, and may, as it shall elect, take charge of the management of cemetery grounds, or monuments specially erected in honor of soldiers or seamen who have died in the service of the state, or of the United States, or both; and monuments, and the surroundings thereof, erected in honor of deceased soldiers or seamen, shall be protected by and under the penalties prescribed in the statutes for the protection of cemeteries and burial grounds. 62 v. 44, § 1; S. & S. 68.

Power is given such an organization to acquire and use real estate, which shall be exempt from taxation (3107-42, 43) (84 O. L. 173; 83 O. L. 1).

§ 3580. Officers of cemetery association may appoint policemen—

The trustees, directors or other officers of any cemetery company or association, whether incorporated or unincorporated, and township trustees having charge of township cemeteries, may appoint as many day and night watchmen of their grounds as they may deem expedient. Such watchmen, and all superintendents, gardeners and agents of such company or association or of said township trustees, stationed on the grounds, may take and subscribe, before any mayor or justice of the peace in the township where such grounds are situate, an oath of office similar to the oath required by law of constables, and upon taking such oath, such watchmen, superintendents, gardeners or agents shall have, exercise and possess all the powers of police officers within and adjacent to the cemetery grounds, and any person violating the by-laws, rules and regulations adopted by such trustees, directors or other officers, or the laws of this state in reference to the protection, good order, care and preservation of cemeteries, and the trees, shrubbery, structures, and adornments therein, shall be guilty of a misdemeanor, and fined in any sum not more than

fifty dollars nor less than five dollars; and such watchmen, superintendents, gardeners and agents may arrest, on view, all persons found violating the provisions of this section, and bring such persons so offending before the mayor or justice of the peace within such township, to be dealt with according to law. 86 O. L. 254.

§ 3581. Powers in certain counties—

The trustees of any cemetery company or association, in any county containing a city of the first class, may purchase, or take by gift or devise, land for the sole and exclusive use of a cemetery, not exceeding five hundred acres in extent, and hold the same exempt from execution, and from appropriation for public purposes, three hundred acres of which shall be exempt from all taxation; and the trustees, whenever in their opinion any portion of their lands is unsuitable for burial purposes, may sell such portion, and apply the proceeds thereof to the general purposes of the company or association; but upon such sales being made, the lands so sold shall be returned by the trustees to the auditor of the proper county, to be by him placed upon the grand duplicate for taxation. 63 v. 88 § 1; 67 v. 35, § 1; S. & S. 69.

§ 3581a. Acquisition or sale of land in county containing city of the second class—Exemptions—Return for taxation—

The trustees of any cemetery company or association in any county containing a city of the second class may purchase or take by gifts or devise land for the sole and exclusive use of a cemetery, not exceeding three hundred acres in extent, and hold the same exempt from execution, and from appropriation for public purposes, two hundred acres of which shall be exempt from all taxation; and the trustees whenever in their opinion any portion of their lands is unsuitable for burial purposes may sell such portions, and apply the proceeds thereof to the general purposes of the company or association; but upon such sales being made the lands so sold shall be returned by the trustees to the auditor of the proper county, to be by him placed upon the grand duplicate for taxation. 92 O. L. 114.

§ 3582. How receipts and income to be applied—

The receipts and income of such company or association, whether derived from the sale of lots, from donations, or otherwise, shall be applied to the payment of the purchase of such lands, to the laying out, preservation, protection and establishment of the cemetery, and the avenues within the same, to the erection of such buildings as may be necessary, and to the general purposes of such company or association; no debts shall be contracted in anticipation of future receipts, except for the original purchase of the land, and laying out, inclosing, and embellishing the grounds and avenues therein; and no part of the proceeds of lands sold, or any of the funds of any such company or association, shall ever be divided to its stockholders or lot owners, but all its funds shall be used exclusively for the purpose of the company or association, as herein above specified, or invested in a fund the income of which shall be used and appropriated as aforesaid. 67 v. 35, § 2.

§ 3583. May accept and execute certain trusts—

Every cemetery company or association shall have full power and capacity to take, hold, possess, use, enjoy and occupy such property of any kind as may be hereafter legally given, granted or devised to it, for the purpose of building or repairing fences, graves, vaults, monuments, walks, cemetery lots, drives or avenues in its cemetery, or for the purpose of building or repairing therein any particular fence, cemetery lot, grave, vault, monument, walk, drive, or avenue, and to appropriate such property, or the proceeds thereof, to any of the foregoing purposes, according to the terms of the trust for which the same may be given, granted or devised as aforesaid. 73 v. 210, § 1.

§ 3584. When may hold land in village—

Any association of persons who have been and are acting as a cemetery association and have purchased and improved land for cemetery purposes, paid for by subscriptions of lot holders and the sale of lots, and who are acting through a board of trustees chosen by the members of the association, may, when the lands thus occupied for cemetery purposes have been brought or held within the corporate limits of any village subsequently to the time of their purchase and improvement, become incorporated

for cemetery purposes, as though the lands held by the association were outside of such corporate limits. 75 v. 132, § 1.

§ 3585. Powers of certain corporations—

Any association organized under the preceding section may, as the successor of the original association, through and by the concurrence of the original association, take possession of, hold, and use for cemetery purposes, all the property belonging to and held by the original association for such purposes, with full power to sell and convey lots, and do all and singular the things necessary in the proper arrangement of the affairs of such association. 75 v. 132, § 2.

§ 3586. Rights of lot owners assured—

All rights of present lot owners in the cemetery grounds of the original association are reserved and assured to them, and made valid, without reference to the form of conveyance issued to them by the trustees of the original association. 75 v. 132, § 3

§ 3586a. Rights and powers of crematory associations—

Any company or association incorporated for the purpose of the erection and maintenance of a crematory or other place or building for cremating the dead, may exercise all the rights and powers conferred by this chapter, subject to the same conditions; provided, however, that no building shall be erected for any such purpose by any company, association, person or persons within two hundred yards of any dwelling house, unless the owner of such dwelling house give his consent, and it shall be unlawful for any person or persons, company, association or firm to establish a morgue on any street or part of a street upon which are dwelling houses, unless the owner or occupants of such dwelling houses within two hundred yards (200 yards) of said proposed morgue give their written consent thereto; provided that this act shall not apply to any crematory already built, or morgue already established. 94 O. L. 95.

§ (3586-1). Sec. 1. Authorizing the sale of certain cemeteries and the removal of the remains of the dead interred therein—

The trustees of any cemetery association, whose cemetery is within the limits of any city or village, interments in which have

been prohibited by ordinance of such municipal corporation, or whose cemetery has been abandoned as a place for the burial of the dead, or which association is involved in debt which it is unable to pay, may apply by petition to the court of common pleas, of the county wherein such cemetery is located, for the sale of the whole or a portion of said cemetery grounds, and the court may order the same to be sold, either the whole or such portion thereof as the court may direct, and the money derived from such sale shall, under the direction of the court, be applied to the costs and expenses of the removal and reinterment of the remains of the dead therein, and to the payment of the debts, if there be any, of such cemetery association, and the surplus, if any, shall be invested upon interest, and the income therefrom applied to keeping in repair the unsold portion thereof, or if the entire premises be sold, then the surplus shall be divided pro rata among the lot owners, and the court shall grant such time for the removal of the dead, after the confirmation of such sale, as it may deem necessary. 85 O. L. 7.

§ (3586-2). Sec. 2.

Notice of the filing of such application shall be given by publication in some newspaper of general circulation in the county where it is filed, for four consecutive weeks, setting forth the object and prayer thereof, and that any person claiming an interest in the subject-matter of such petition may appear and file an answer therein; and the court shall, on final hearing of the case, make such order or decree as will best secure the rights of the persons having an interest in such cemetery. 82 O. L. 164.

§ (3586-3). Sec. 1. Cemetery associations may create sinking fund—

Any cemetery association which has been organized under any general or special law of this state, is hereby fully authorized and empowered to create a sinking fund, out of any surplus money they may have on hand, or which may have been given to said association by will, deed or otherwise. 80 O. L. 91.

§ (3586-4). Sec. 2. How such funds invested—

That it shall be lawful for any cemetery association so organized to invest any sum of money appropriated to said sinking fund in any bonds of the United States, State of Ohio, or any city of the

State of Ohio, or to loan it upon first mortgage of real estate in the State of Ohio worth double the loan, or upon collateral of any of the above securities of equal face value with the loan; provided, however, that it shall not be lawful to loan any such money to any member of said cemetery board. 80 O. L. 91.

(3586-5). Sec. 3, How expended—

That all moneys thus appropriated to any sinking fund, and all interest derived thereon, shall be held exclusively for the enlargement of cemetery grounds, their improvement, repair or adornment, or for constructing or keeping in repair any buildings, monuments or other structures deemed necessary or appropriate for cemetery grounds, and shall not be appropriated or used for any other purpose whatever. 80 O. L. 91.

SUPERINTENDENT OF INSURANCE.

SECTION

- 266. Appointment, term, and who ineligible.
- 267. Bond.
- 268. Shall enforce all laws on insurance.
- 269. May appoint a chief clerk, and other clerks and assistants.
- 270. Office, and how and from what fund salaries paid.
- 271. His certificates, assignments and conveyances, and copies from his office.
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- 274. Proceedings against unsound life or joint stock companies.
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- 277. Proceedings against unsound foreign companies.

SECTION

- 278. Records and annual reports.
- 279. Annual valuation and examination of life companies.
- 280. Shall furnish blanks for statements by companies.
- 281. Securities shall be deposited with state treasurer.
- 282. Fees to be paid by companies.
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- 285. How agents of foreign companies appointed.
- 286. How life company may discontinue business.
- 286a. Withdrawal of securities.
- 287. Companies organized under federal laws made subject to this chapter.
- 288. Penalty.
- 289. Insurance business unlawful except under this chapter.

§ 266. Appointment and term—Who ineligible—

The superintendent of insurance shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office for three years; and no person shall be appointed who is not an elector of this state, or who has any official connection with an insurance company, owns any stock in such company, or is interested in the business thereof, except as a policy holder. 69 v. 32, § 2.

§ 267. Bond and oath filed with the secretary of state—

Before entering upon the discharge of his duties, the superintendent shall give bond to the state in the sum of twenty thousand dollars, with not less than two sureties, to be approved by the governor, conditioned for the faithful discharge of his duties; and the bond, with his oath of office and the approval of the governor indorsed thereon, shall be filed with the secretary of state. 69 v. 32, § 3.

§ 268. Duty to enforce insurance laws—

The superintendent shall see to the execution and enforcement of all laws relating to insurance. 69 v. 32, § 3.

See note under sec. 3656.

§ 269. Deputy superintendent — Appointment — Oath — Bond—Powers and duties—Compensation—Employment of clerks and experts—

The superintendent may appoint a deputy superintendent having the same qualifications as the superintendent, whose appointment may be evidenced by a certificate under the official seal of the superintendent. Before entering upon the discharge of his duties, the deputy superintendent shall take the oath of office, and give bond in the sum of ten thousand dollars to the superintendent, with two or more sureties to the acceptance of the superintendent, conditioned for the faithful performance of his official duties. In case of the absence or inability of the superintendent, the deputy superintendent shall have the powers and perform the duties of the superintendent. The deputy superintendent shall receive a salary of eighteen hundred dollars per annum, and in addition, as compensation for his services for making out and forwarding annually, semi-annually, and quarterly, the interest checks and coupons accruing upon the bonds and securities deposited by foreign insurance companies, may annually charge and collect from such foreign insurance companies fees not exceeding twenty-five dollars on each one hundred thousand dollars of bonds required to be deposited by such companies. Provided, however, that the amount of such fees so retained shall not exceed in any one year more than six hundred dollars, the balance, if any, to be turned into the state treasury. The superintendent may employ from time to time such other clerks as the prompt dispatch

of business requires; and he may also, from time to time, employ skilled and competent persons to examine the business and affairs of insurance companies and report thereon. 93 O. L. 292.

§ 270. Office where—How salaries and other expenditures paid—

The office of superintendent shall be in the state house, and all salaries and expenditures of the insurance department shall be paid on the certificate of the superintendent; but no money shall be so paid out of the state treasury in excess of the amount collected from insurance companies, as provided by law. 69 v. 32, § 4.

§ 271. Instruments under superintendent's seal to be evidence, and entitled to record—

Any certificate, assignment, or conveyance, executed by the superintendent in pursuance of law, and sealed with his seal of office, shall be received as evidence, and may be recorded in the proper recording office in the same manner and with like effect as a deed regularly acknowledged before an officer authorized by law to take acknowledgments of deeds; and all copies of papers in the office of the superintendent, certified by him and authenticated by the seal, shall in all cases be evidence equally and in like manner as the originals. 69 v. 32, § 5.

§ 272. Examinations of companies doing business in the state—

The superintendent, when he has reason to suspect the correctness of any statement of an insurance company doing business in the state, whether incorporated in this state or not, or that its affairs are in an unsound condition, shall make, or cause to be made by some person by him for that purpose appointed, an examination into the affairs of such company; and such company, its officers and agents, shall submit their books and business to such examination, and in every way facilitate the same, and he shall, annually, make or cause to be made, an examination of the assets of every life insurance company organized under the laws of this state, and ascertain if the same are invested in the manner prescribed by law at the date each investment was made, and also if the last preceding annual statement of assets and unpaid death claims was correct; and the expense of all examinations

shall be charged to and collected of the companies examined, respectively, except that the actual expenses incurred by said examination of a life insurance company organized under the laws of this state shall be paid out of the fees paid by the insurance companies to the insurance department. 75 v. 576, § 7; 69 v. 32, § 12.

If commissioner refuses license to a foreign company because he is not satisfied as to its financial soundness after examination in good faith, mandamus will not lie to control his discretion. *State ex rel. v. Moore*, 42 Ohio St. 103.

§ 273. Power of examiners—May publish result—

For the purposes of such examination, the superintendent, or the person or persons so appointed by him, have power to administer oaths to and examine the officers and agents of such company relating to its business and affairs; and when the superintendent deems it to the interest of the public, he may publish the result of such investigation in a newspaper printed in Columbus, and of general circulation in the state, and in one printed in the county where the principal office of such company is located. 69 v. 32, § 8.

§ 274. Proceedings against unsound companies—

When it appears to the superintendent, from examination, or otherwise, that the assets of any life insurance company, organized under the laws of the state, are insufficient to reinsure its outstanding risks, as provided by this chapter, or that the assets of any joint stock insurance company other than life, organized under the laws of this state, after deducting therefrom all actual liabilities and a reinsurance fund equal to fifty per cent of the whole amount of premiums on all unexpired risks and policies, are reduced twenty per cent or more below the capital stock required by law, he shall require the officers thereof to direct the stockholders to pay in the amount of such deficiency, within such period as he designates in such requisition; and after the superintendent issues his requisition calling for a sum to be paid by the stockholders of any company, amounting to or exceeding forty per cent of the capital, it is unlawful for the company to issue any new policies or transact any new business until the superintendent of insurance issues to such company a license, authorizing it to resume business, or until the court has rendered its decision

in the case, as herein provided; but in case the requisition calls for a less amount than forty per cent of the capital, and the officers of the company, in accordance with the requisition, direct the stockholders to pay the amount required for making up the capital, and so signify to the superintendent, then it will be lawful for the company to continue business as before the issuing of the requisition, for the term of thirty days from the date thereof; and if at the expiration of the thirty days, any portion of the requisition of the superintendent remains unpaid, the company shall not issue any new policies or transact any new business until authorized by the superintendent as aforesaid. 70 v. 165, § 9.

Dividends afterward declared may be credited by the company upon an assessment made under this section and remaining unpaid. *Rhodes v. Equitable Acc. Ins. Co.*, 3 C. C. 501, affirmed in 27 B. 160.

§ 275. Procedure in case of default to comply with requisition—

In case of default on the part of the company to comply with such requisition, the superintendent shall communicate the fact to the attorney-general, who shall apply to the court of common pleas of the county in which the principal office of the company is located for an order requiring such company to show cause why the business thereof should not be closed, and shall give to the company such notice of the pending of such application as the court directs, and the court shall thereupon proceed to hear the allegations and proof of the respective parties; or, the court shall have power to refer the application of the attorney-general to a referee, to inquire into and report upon the facts stated therein. In case it appears to the satisfaction of the court that the assets of the company are not sufficient, as aforesaid, or that the interests of the public so require, the court shall decree a dissolution of the company and a distribution of its effects; and any transfer of the stock of a company made during the pendency of such investigation shall not release the party making the transfer from his liability for losses which have occurred previous to the transfer. 70 v. 165, § 10.

§ 276. In relation to unsound mutual insurance companies—

If, upon examination, it appears to the superintendent that the

assets of any company organized on the plan of mutual insurance, after deducting therefrom all actual liabilities and a reinsurance fund equal to fifty per cent of the advanced cash premiums received on all unexpired risks and policies, are insufficient to justify the continuance of such company in business, he shall proceed, in relation to such company, in the same manner as is herein required in regard to joint stock companies; and the trustees or directors of such company are hereby made personally liable for any losses which are sustained upon risks taken after the superintendent of insurance has issued his requisition for filling up the deficiency in the assets, and before such deficiency is made up; but nothing herein shall be so construed as to require any mutual fire insurance company to keep on hand any cash reinsurance reserve or funds invested in securities, other than their premium notes, when the premium notes amount in gross to three per centum of the amount at risk by the company, 70 v. 165, § 11.

§ 277. Revocation of authority to such companies—

When it appears to the superintendent of insurance, from the report of the person appointed by him, or other satisfactory evidence, that the affairs of any company, partnership, or association, not organized under the laws of this state, are in an unsound condition, he shall revoke the authority granted to such company to do business in this state, and cause a notice thereof to be published in at least one newspaper published in the city of Columbus, and in the county where the general agency is located within this state; and after the publication of such notice, it is unlawful for the agents of such company to procure any new applications for insurance or to issue any new policies. 69 v. 32; § 12.

§ 278. Record of proceedings, and report thereof—

The superintendent shall keep and preserve, in a permanent form, a full record of his proceedings, including a concise statement of the condition of each company reported, visited, or examined by him; and he shall, annually, at the earliest practicable date after the returns are received from the several companies, make a report to the legislature of the general conduct and condition of the insurance companies doing business in this state, with such suggestions as he deems expedient, including also the

information contained in the statements required of the companies, and the result of the official valuations of life policies, to be arranged in tabular form, and prepare the same for printing in two separate reports, one pertaining to life insurance companies, and the other to all insurance companies other than life; and he shall also report the names and compensation of the clerks employed by him, the whole amount of income, the source whence derived, and the expenses in detail, during the year ending on the thirty-first day of the preceding December. 69 v. 32, § 13.

§ 279. Annual valuations, rate of interest, etc.—Exception to above—

The superintendent shall, annually, make or cause to be made, net valuations of all outstanding policies, additions thereto, unpaid dividends, and all other obligations of every life insurance company transacting business in this state; and for the purpose of such valuations, and for making special examinations of the condition of life insurance companies, as provided in the laws of this state relating to life insurance companies, and for valuing all policies of whatever description, and for any purpose whatever, the rate of interest shall be four per cent per annum, and the rate of mortality shall be established by the tables known as the American experience tables, but when the laws of any other state of the United States authorize a valuation of life insurance policies, by some designated state officer, according to the standard herein provided, or according to any other standard which makes the value of the policy not less than that of the standard herein provided, the valuation made according to the said standard, by such officer of the policies and other obligations of any life insurance company not organized under the laws of this state, and certified by said officer, may be received as true and correct, and no further valuation of the same shall be required of such company by the superintendent of insurance, except that in no case shall the superintendent of insurance accept the certificate of valuation of such officer of another state of the United States, when such officer does not accept or refuses or fails to accept a like certificate from him of the valuation of the policies of any life insurance company incorporated under the laws of Ohio, or when any such officer of another state is prohibited by law from accepting the certificate of valuation of the superintendent of insurance of this state, the

said superintendent shall forthwith require the officers of all companies located in such state to submit to him, within a reasonable time, the descriptions of the policies thereof for valuation, and he shall proceed to make, or cause to be made, a valuation thereof according to the standard herein named, and in case said descriptions are not submitted to the said superintendent within the time fixed by him, he shall revoke the license of such company or companies as shall fail to do so, and shall refuse to renew the same, until such descriptions shall be submitted and a valuation by him shall have been completed. 86 O. L. 11.

For decisions as to circumstances under which superintendent of insurance cannot require compensation for valuation of policies, and governing rate of taxation, see *State ex rel. New Eng. Mut. Life Ins. Co. v. Reinmund*, 45 Ohio St. 214. See also *State v. Hahn*, 50 Ohio St. 714.

§ 280. Forms of statements to be furnished—

The superintendent shall, annually, in September, furnish to the insurance companies doing business in this state, two or more printed copies of the forms of statements required by this chapter to be made by them, and he may make such changes, from time to time, in the form of the same, and such additions thereto, as seem to him best adapted to elicit from the companies a true exhibit of their condition. 69 v. 32, § 15.

§ 281. Securities shall be deposited in the state treasury—

All securities deposited with the superintendent of insurance, pursuant to the provisions of any law of the state, shall be deposited by him with the treasurer of state, who, with his sureties, shall be responsible for the safe keeping thereof; and the treasurer shall only deliver such securities or coupons attached thereto upon the written order of the superintendent of insurance. 70 v. 165, § 16.

§ 282. Fees shall be paid by companies—

There shall be paid by every insurance company doing business in this state, to the superintendent of insurance, the following fees: For filing a copy of its charter or deed of settlement, twenty-five dollars; for filing each statement, twenty dollars; for each certificate of authority, or license and certified copy thereof, two dollars; for each copy of a paper filed in his office, the sum of twenty cents per folio; and for affixing the seal of

office and certifying any paper, one dollar; all of which fees shall be paid by the superintendent into the state treasury. There shall also be paid by every life insurance company doing business in this state, annually, by way of compensation for the valuation of its policies, in case no certified valuation of the same has been furnished to the superintendent of insurance, as provided in section *two hundred and seventy-nine* of this chapter, one cent on every one thousand dollars insured by it on lives, which, less the actual cost of making such valuations, shall be paid by the superintendent of insurance into the state treasury. When by the laws of any other state or nation, any taxes, fines, penalties, license fees, deposits of money, or of securities, or other obligations or prohibitions are imposed on insurance companies of this state, doing business in such state or nation, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions, of whatever kind, shall be imposed upon all insurance companies of such other state or nation, doing business within this state, and upon their agents here. 89 O. L. 167.

See note to sec. 279.

The retaliatory provisions of sec. 282 must be confined to cases falling fairly within the letter of the statute; it must appear that an Ohio company has been formed for doing such kind of insurance as would not be permitted in the foreign state, or that such company would be there subjected to burdens not imposed by this state on the foreign company. *State v. Ins. Co.*, 49 Ohio St. 440.

§ 283. License, etc., of persons making application for insurance—

It shall be unlawful for any person, company or corporation in this state either to procure, receive or forward application for insurance in any company or companies not organized under the laws of this state, or in any manner to aid in the transaction of the business of insurance with any such company, unless duly authorized by such company and licensed by the superintendent of insurance, in conformity to the provisions of this chapter. 69 v. 32, § 18.

§ 284. Annual publication of certificate required—

Every insurance company doing business in this state shall publish, at least once a year, in some newspaper of general cir-

ulation, in every county where such company has an agent, a certificate from the superintendent of insurance that such company has, in all respects, complied with the laws of the state relating to insurance; and the certificate shall also contain a statement, under the oath of the president or secretary of such insurance company, of the actual amount of paid-up capital, the aggregate amount of assets and liabilities, together with the aggregate income and expenditures of such company for the year preceding the date of such certificate; a copy of which certificate shall be filed in the office of the recorder in each county in which the company has an agent; and for every such paper the recorder shall receive the sum of ten cents. No other publication than as herein provided for is required of such companies. 69 v. 32, §§ 19, 21.

§ 285. Foreign insurance companies may appoint agents, etc.—

Any insurance company not organized under the laws of this state may appoint one or more general agents in this state, by resolution of its board of directors or managers, with authority to appoint other agents of the company in this state, a certified copy of which resolution shall be filed with the superintendent of insurance; and agents of such company, appointed by such general agent, shall be held to be the agents of such company as fully, to all intents and purposes, as if they were appointed directly by the company; and agents for any such company in this state may be appointed by the president, vice-president, chief manager or secretary thereof, in writing, with or without the seal of the company, and when so appointed shall be held to be the agents of such company as fully as if appointed by the board of directors or managers in the most formal mode. 69 v. 32, § 20.

§ 286. Discontinuance of business by life insurance company—

When any life insurance company, transacting the business of insurance within the State of Ohio, desires to discontinue its business, the superintendent shall, upon application of such company, or association, give notice of such intention in a paper published and having general circulation in the county in which such company or its general agency is located, at least once a week

for six weeks, the expense of publication to be paid by the company. After such publication, the superintendent shall deliver up to such company, or association, the securities held by him belonging to it, on being satisfied by the exhibition of the books and papers of such company, or association, and on examination to be made by himself, or some competent disinterested person or persons, to be appointed by him, and upon the oath of the president or principal officer, and the secretary or actuary of the same, that all debts and liabilities of every kind are paid and extinguished, that are due, or may become due, upon any contract or agreement made with any citizen or resident of the United States; and the superintendent may also, from time to time, deliver up to such company, or association, or its assigns, any portion of said securities, on being satisfied that an equal proportion of the debts and liabilities, of every kind, that are due, or may become due, upon any contract or agreement made with any citizen or resident of the United States by said company, or association, has been satisfied; but the amount of securities retained by him shall not be less than twice the amount of remaining liabilities. 69 v. 32, § 22.

§ 286a. Discontinuance of business and withdrawal of securities by insurance company other than life—

When any insurance company or corporation other than life, which has made, or hereafter shall make, a deposit with the superintendent of insurance, intends to continue its business in Ohio, the superintendent shall, upon application of such company or corporation give notice of such intention in three newspapers of general circulation in the state at least once a week for six weeks, the expense of such publication to be paid by the company. After such publication, and on being satisfied by the affidavit of the principal officers of the company and by an examination of the books and records of the company or corporation to be made by him or some competent disinterested person or persons by him appointed for that purpose, if such examination be by him deemed necessary, that all debts and liabilities of every kind that the deposit is made to secure, or that may become due on any policy issued to any resident or citizen of the State of Ohio, are fully paid off, satisfied and discharged, the superintendent shall deliver up to such company or corporation

or its assigns the securities held by him belonging to it. 90 O. L. 103.

§ 287. Applicable to companies under the laws of the United States—

All the provisions of this chapter relating to insurance companies organized under the laws of any other state of the United States shall apply to any company organized under the laws of the United States, for any of the purposes specified in this chapter; and all the provisions of this chapter relating to agents of companies organized under the laws of any state shall apply to the agents of such companies organized under the laws of the United States; and any violation of the provisions of this chapter by any person, or agent, in the employment of any such company, organized under the laws of the United States, shall subject the offender to the same penalties provided by this chapter for any violation of its provisions by persons acting for similar companies organized under the laws of any other state of the United States. 59 v. 32, § 23.

§ 288. Penalty for violation of statutory provisions relating to insurance companies.

Any person who violates any of the provisions of this chapter, or of any insurance law of this state for the violation of which no penalty is elsewhere provided, shall be fined not more than one thousand dollars or imprisoned not more than six months, or both. Any corporation, company or association violating any of the provisions of this chapter, or of any insurance law of this state for the violation of which no penalty is elsewhere provided, shall be liable to a penalty of not more than one thousand dollars nor less than one hundred dollars, to be recovered by action in the name of the state, and on collection paid to the superintendent of insurance to be covered by him into the state treasury. 91 O. L. 331.

§ 289. Insurance business unlawful except under provisions of this chapter.

The provisions of this chapter shall apply to individuals and parties, and to all companies and associations, whether incorporated or not, now or hereafter engaged in the business of insurance; and it is unlawful for any company, corporation, or associa-

tion, whether organized in this state or elsewhere; either directly or indirectly, to engage in the business of insurance, or to enter into any contracts substantially amounting to insurance, or in any manner to aid therein, in this state, without first having complied with all the provisions of this chapter. 69 v. 32, § 25.

LIFE INSURANCE COMPANIES.

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§ 3587. For what purposes companies may be formed—

Any number of persons, not less than thirteen, may associate and form a company to make insurance upon the lives of individuals, and every insurance appertaining thereto or connected therewith, on the mutual or stock plan, and grant, purchase or dispose of annuities. 69 v. 150, § 1.

Where a corporation purchases property in a mode or for a purpose not authorized, a stranger to the agreement and not injured thereby, cannot defeat the title. *Ehrman v. Union Central Life Insurance Co.*, 35 Ohio St. 324.

Held, where note given to insurance company was sold to another insurance company, it was no defense to maker that the sale was unauthorized, in absence of proof of prejudice. *Ib.*

Where a policy is properly forfeited for non-payment of assessments, the neglect of assured's book-keeper to pay them is not an excuse, or does delay in declaring the forfeiture waive the right to forfeit the policy. *Graveson v. Cin. Life Assn.*, 8 C. C. 171, affirmed in 37 B. 129.

Although such companies have no power to transact business on the assessment plan, this results solely from an omission of the legislature. *Ohio ex rel. v. Life Ins. Co.*, 58 Ohio St. 1.

§ 3588. Articles of incorporation; what to contain—

Such persons shall file in the office of the secretary of state articles of incorporation, signed by them, setting forth their in-

tention to form a company for the purposes named in this chapter, which articles shall comprise a copy of the charter they propose to adopt; and the charter shall set forth the name of the company, which shall not be the corporate name or title used to designate any fire, life, marine or other insurance company already existing under the laws of this state, the place where it is to be located, the kind of business to be undertaken, the manner in which the corporate powers of the company are to be exercised, the number of directors or trustees, who must be stockholders, or members, and which number may be increased, at the will of the stockholders representing a majority of the stock, or of a majority of the members, to any number not exceeding twenty-one, the manner of electing trustees or directors and other officers, a majority of whom shall be citizens of this state, and the time of such election, the manner of filling vacancies, the amount of capital to be employed, and such other particulars as may be necessary to explain and make manifest the objects and purposes of the company, and the manner in which it is to be conducted. 69 v. 150, § 4; 60 v. 75, § 1; 75 v. 557, § 1; S. & S. 217.

§ 3589. Articles must be approved by the attorney-general—

When such articles are filed in the office of the secretary of state, and the name assumed by the company is not so nearly similar to the name of any other company organized in this state as to lead to confusion or uncertainty on the part of the public, the secretary of state shall submit the same to the attorney-general for examination, and if found by him to be in accordance with the provisions of this chapter, and not inconsistent with the constitution and laws of the United States and of this state, he shall certify to and deliver the same to the secretary of state, who shall cause the same, with the certificate of the attorney-general, to be recorded in a book to be kept for that purpose, and, upon application of the signers thereof, the secretary of state shall furnish to them a certified copy of such articles and certificate. 69 v. 150, § 5; 75 v. 557, § 1.

§ 3590. Notice of opening of books for subscription—

When the signers of the articles of incorporation receive from the secretary of state a certified copy thereof, and desire to organize such company, they shall publish their intention in a paper

published and having general circulation in the county in which the company is to be organized; and when such publication has been made in such newspaper for six weeks, they may open books to receive subscriptions to the capital stock, keep such books open until the amount required by this chapter is subscribed, distribute the stock among the subscribers, if more than the necessary amount is subscribed, collect the capital, and complete the organization of the company. 69 v. 150, § 6.

§ 3591.

No joint stock company shall be organized under this chapter with a less capital than one hundred thousand dollars, and the whole capital shall, before proceeding to business, be paid in and invested in treasury notes, in stocks or bonds of the United States, in stocks or bonds of the State of Ohio or of any municipality or county thereof, or in mortgages on unincumbered real estate within the State of Ohio worth double the amount loaned thereon, exclusive of buildings. 91 O. L. 39.

For decisions on demand of notes due insurance companies and construction put upon notes and mortgage given for subscription, see *Union Central Life Insurance Co. v. Curtis*, 35 Ohio St. 343, and *Same v. Jones*, 35 Ohio St. 351.

§ 3592. May increase its capital stock—

When a company organized under any law of this state requires, in the opinion of the board of directors thereof, a larger amount of capital than that fixed by its articles of incorporation, they shall, if authorized by the holders of two-thirds of the stock, file with the secretary of state a certificate setting forth the amount of such desired increase, and thereafter such company shall be entitled to have the increased amount of capital fixed by the certificate, and the same shall be invested as required by the preceding section. 69 v. 150, § 6.

§ 3593. Deposit of securities with superintendent—

Any company may invest its capital in the stocks, bonds or mortgages mentioned in section *thirty-five hundred and ninety-one*, and change and invest the same, or any part thereof, in like manner, at pleasure; but no company shall commence business until it has deposited with the superintendent of insurance at least one hundred thousand dollars in the stocks, bonds and

mortgages aforesaid, or one or more of them, duly made or assigned to the superintendent in trust for the purposes mentioned in this chapter; and when any mortgage of real estate is assigned to the superintendent, the assignment shall be immediately entered in the records of the county in which the real estate is situate, the fee for the recording of which shall be paid by the company. 69 v. 150, § 8.

Such securities are held only for benefit of policy holders; and subject to their rights are also subject to the rights of the makers; and on dissolution, if the securities are sufficient, there should be collected the amount needed to pay such claims of policy holders; if the securities are not sufficient, the proceeds should be duly applied upon the claims of such policy holders. As against the makers, the company has no rights in accommodation notes and mortgages given for the purpose only of such deposit. *Falkenbach v. Patterson, Receiver*, 43 Ohio St. 359.

§ 3594. Company may change such deposits, and collect interest—

The superintendent of insurance shall hold such securities as security for policy holders in the company; but so long as any company so depositing continues solvent he shall permit it to collect the interest or dividends on its securities so deposited, and from time to time to withdraw such securities, or any part thereof, on depositing with him other securities of the kinds heretofore named, and of equal value with those withdrawn. 69 v. 150, § 9.

§ 3595. When company may commence business—

When the company is fully organized, and has deposited the requisite amount of securities as aforesaid, the superintendent shall, unless he find the name assumed by the company so nearly similar to the name of another company organized in this state as to lead to confusion or uncertainty on the part of the public, furnish the company with a certificate of such deposit, which with a certified copy of the papers required by this chapter, when filed in the county recorder's office of the county wherein such company is located, shall be the authority to commence business and to issue policies, and the same may be used in evidence for and against the company in all actions. 69 v. 150, § 10; 75 v. 557, § 2;

§ 3596. What kind of business such companies may do—

No company, organized under the laws of this state, shall undertake any business of risk, except as herein provided; and no company, partnership, or association, organized or incorporated by act of congress, or under the laws of this or any other state of the United States, or by any foreign government, transacting the business of life insurance in this state, shall be permitted or allowed to take any other kind of risks, except those connected with, or appertaining to making insurance on life or against accidents to persons, and granting, purchasing and disposing of annuities; nor shall the business of life insurance, or life and accident insurance, in this state be in any wise conducted or transacted by any company, partnership or association, which in this state, or any other state or country, makes insurance on marine, fire, inland, or any other risk, or does a banking or any other kind of business in connection with insurance. 85 O. L. 119.

An agreement to pay an annuity to a husband and wife "during their natural lives," binds the party to pay the annuity during the life of the survivor also. *Douglas v. Parsons*, 22 Ohio St. 526.

§ 3597. Definitions—Consolidation and reinsurance—Petition to superintendent of insurance—Notice to policy holders—Commission to hear and determine petition—Costs—Penalties—

The word company or companies when used in this act shall mean any corporation or association authorized to do the business of life, accident or health insurance, either on the stock, mutual, stipulated premiums, assessment or fraternal plan. No company organized under the laws of this state to do the business of life, accident or health insurance, either on stock, mutual, stipulated premiums, assessment or fraternal plan, shall consolidate with any other company, or reinsure its risks, or any part thereof with any other company, or assume or reinsure the whole of [or] any portion of the risks of any other company, except as hereinafter provided; but nothing herein contained shall prevent any such company from reinsuring a fractional part, not exceeding one-half, of any single risk. When any such company shall propose to consolidate with any other company, or enter into any contract of reinsurance, it shall present its petition to the superintendent of the insurance department of this state, setting forth the terms and conditions of such proposed consolidation or reinsurance,

and praying for the approval or of any modification thereof, which the commission hereinafter provided for may approve. The superintendent shall thereupon issue an order of notice, requiring notice to be given by mail to the policy holders of such company, of the pendency of such petition, and the time and place at which the same will be heard, and the publication of said order of notice and said petition, in five daily newspapers designated by the superintendent, at least one of which shall be published in the city of Columbus, for at least two weeks before the time appointed for the hearing upon said petition. The governor of the state, or in event of his inability to act, some competent person resident of the state, to be appointed by him, the attorney-general of the state, and the superintendent of insurance of the state, shall constitute a commission to hear and determine upon said petition. At the time and place fixed in said notice, or at such time and place as shall be fixed by adjournment, said commission shall proceed with said hearing, and may make such examination into the affairs and condition of said company as it may deem proper. The superintendent of the insurance department of this state shall have the power to summon and compel the attendance and testimony of witnesses and the production of books and papers before said commission. Any policy holder or stockholder of the above named company or companies may appear before said commission and be heard in reference to said petition. Said commission, if satisfied, that the interests of the policy holders of such company or companies are properly protected, and that no reasonable objection exists thereto, may approve and authorize the proposed consolidation or reinsurance, or of such modification thereof as may seem to it best for the interests of the policy holders, and said commission may make such order with reference to the distribution and disposition of the surplus assets of any such company thereafter remaining, as shall be just and equitable. Such consolidation or reinsurance shall only be approved by the consent of all the members of said commission, and it shall be the duty of said commission to guard the interests of the policy holders of any such company or companies proposing to consolidate or reinsure. All expenses and costs incident to proceedings under this section shall be paid by the company or companies bringing said petition. Any officer, director or stockholder of any such company or companies

violating or consenting to the violation of this section shall be punished by fine of not less than ten thousand dollars, and by imprisonment in a county or city jail for not less than one year.
94 O. L. 103.

§ 3598. How companies may invest accumulations—

A company organized under the laws of this state may invest its accumulations as follows, and may sell, change or reinvest the same, or any part thereof, at pleasure:

1. In United States, state, county, or city bonds, if the market value of the bonds, at the date of purchase, is at least eighty per cent of their [par] value.

2. In bonds and mortgages upon unincumbered real estate, the market value of which real estate is at least double the amount loaned thereon, exclusive of buildings, at the date of the investment, and the value of such real estate shall be determined by a valuation, made under oath, by two real estate owners, residents of the county where the real estate is located.

3. In loans upon the pledge of such bonds or mortgages, if the current market value of the bonds or mortgages is at least twenty-five per cent more than the amount loaned thereon.

4. In loans upon its own policies, but not exceeding the reserve or present value thereof computed according to the American experience table of mortality, with interest at four per cent, the same being the amount of the debts of life insurance companies by reason of their outstanding policies in gross.

This section shall not prohibit any company from accepting any other assets than herein enumerated in payment of debts due the company, in order to protect its interests, or from acquiring real estate for its own use, or by foreclosure in accordance with the laws of the state. 75 v. 576, § 11.

§ 3599. What real estate they may acquire—

No company organized under the laws of this state shall purchase, hold, or convey real estate, except for the purposes and in the manner herein set forth, to wit:

1. Such as is requisite for its immediate accommodation in the transaction of its business; or,

2. Such as has been mortgaged to it in good faith, by way of security for loans previously contracted, or for money due; or,

3. Such as has been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or,

4. Such as it has purchased at sales upon judgments, decrees, or mortgages, obtained or made for such debts. 69 v. 150, § 12.

§ 3600. When real estate must be sold—

All real estate acquired as aforesaid, and which is not necessary for the accommodation of a company in the convenient transaction of its business, shall be sold and disposed of within two years after the company acquires title to the same; and the company shall not hold such real estate for a longer period than herein mentioned, unless it procure a certificate from the superintendent of insurance that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the superintendent shall direct in the certificate. 69 v. 150, § 13.

§ 3601. Certain actions authorized—

Actions may be maintained by any company formed under the laws of this state against any of its members, officers, policy holders, or stockholders, for any cause relating to the business of the company; and actions may be prosecuted and maintained by any member, stockholder, or policy holder, or the heirs or legal representatives of either, against the company, for losses which accrue on any risk, if payment be withheld more than two months after the losses become due. 69 v. 150, § 15.

As to bringing suit after limitation named in policy, see *Met. Life Ins. Co. v. Gierl*, 16 C. C. 294; affirmed in 57 O. S. 671; decisions noted under sec. 3643.

Limitation by contract is valid, and not affected by sec. 4991. *Prudential Ins. Co. v. Howle*, 19 C. C. 621.

§ 3602. When dividends may be paid—

The directors, managers, or officers of any company organized under the laws of this state shall not, directly or indirectly, make or pay any dividend, or pay any interest, bonus, or other allowance in lieu of dividend, to its stockholders, except from the surplus funds, after reserving therefrom an amount sufficient to reinsure all its outstanding risks and policies, estimating the value thereof by the table known as the American experience table, with interest at four per cent per annum. 69 v. 150, § 16.

§ 3603. Home companies must make annual reports to superintendent—

The president or vice president, and secretary or actuary, or a majority of the directors, of each company organized under the laws of the state, shall, annually, on the first day of January, or within sixty days thereafter, prepare, under oath and deposit in the office of the superintendent of insurance, a statement showing the condition of the company on the thirty-first day of December then next preceding, exhibiting the following facts and items, in the following form, to wit:

1. The number of policies issued during the year.
2. The amount of insurance effected thereby.
3. The amount of premiums received during the year.
4. The amount of interest and all other receipts, specifying the items.

5. The amount paid to policy holders of the company for losses during the year.

6. The amount of all other expenditures and disbursements of the company, specifying such items as the superintendent may call for.

7. Amount of losses unpaid.
8. Whole number of policies in force.
9. Amount insured thereby.
10. Amount required to reinsure all policies in force, estimating the same by the table known as the American experience table of mortality, with interest at four per cent per annum.

11. Amount of capital stock, specifying amount paid and unpaid.

12. Amount of dividends unpaid; also amount of all other liabilities.

13. A detailed statement of all the assets of the company, and the manner of their investment.

14. An exhibit of the policy obligations of the company, which shall include, in the first annual statement, a schedule showing the number, date, age, when insured, amount insured, term of policy, and term of premium, of all policies then in force, and in every succeeding annual statement a schedule of the foregoing items as to all policies issued during the year, and a similar schedule as to policies which have ceased to be in force during the year. 70 v. 118, § 17.

§ 3604. Companies organized by congress or in other state must procure license—

No company organized by act of congress, or under the laws of any other state of the United States, shall transact any business of insurance in this state until it procures from the superintendent of insurance a certificate of authority so to do; nor shall any person or corporation, directly or indirectly, act as agent in this state for any such company, either in procuring applications for insurance, taking risks, or in any manner transacting the business of insurance, until such person or corporation procures from the superintendent of insurance a license so to do, in which the superintendent shall state that the company has complied with all the requirements of this chapter applicable to such company, and deposit a certified copy of such license in the office of the recorder of the county in which the office or place of business of such agent is established; nor shall any such company take risks or transact any business of insurance in this state, unless possessed of the amount of actual capital required of similar companies organized in this state under the provisions of this chapter, nor unless the entire capital stock of the company is fully paid up, and invested as required by the laws of the state where organized; but if the company is a mutual company, actual cash assets of the same amount and description, invested and deposited as required by the laws of the state where it was organized, shall be accepted in lieu of capital stock. 75 v. 572, § 18.

A life policy issued by a foreign company is not rendered void by the neglect of the company to comply with the provisions of the act of April 16, 1867 (64 v. 92), providing for the incorporation and regulation of insurance companies; nor will such neglect, in an action brought against the company on the policy, excuse the policy holder from paying premiums according to the terms of the policy. *Insurance Co. v. McMillan*, 24 Ohio St. 67.

The superintendent cannot exclude a foreign company in a mere arbitrary discretion. *State ex rel. v. Moore*, 42 Ohio St. 103.

A foreign company insuring lives of members for benefit of others than their families and heirs must procure license before transacting business in this state; such companies are not included under section 3630. *State v. W. U. Mut. Life Ins. Co.*, 47 Ohio St. 167.

§ 3605. Deposit with superintendent of insurance or other officer—

No such company shall transact any business of insurance in this state unless at least one hundred thousand dollars of its

assets are invested in the interest paying bonds or stocks of the United States, or of this state or of any municipality or county thereof, or the interest paying state bonds or stocks of some other state of the United States, of the market value of one hundred thousand dollars in the city of New York, or in bonds and mortgages on unincumbered real estate in this state, or in the state under the laws of which it was organized, of at least double the value of the amount loaned thereon, and such bonds and mortgages are deposited with the superintendent of insurance of this state, or the chief financial or other officer of the state in which such company was organized, designated by the laws of such state to receive the same; and if such bonds and mortgages are deposited with the superintendent of insurance or other officer of another state, the superintendent of insurance of this state shall be furnished with the certificate of such state officer, under his hand and official seal, that he, as such officer, holds in trust and on deposit, for the benefit of the policy holders of such company, the securities above mentioned, giving the items of such securities, and stating that he is satisfied such securities are worth at least one hundred thousand dollars. 91 O. L. 39.

§ 3606. Must file copy of charter, and a statement—

Such company shall also file with the superintendent a certified copy of its charter, or deed of settlement, together with a statement, under the oath of the president, vice-president, or other chief officer or manager, and the secretary of such company, stating the name of the company, the place where it is located, and the amount of its capital, with a detailed statement of all the facts required in the annual statement required of companies organized under this chapter, except as to statement required by item fourteen, section *thirty-six hundred and three*, which statement shall be filed by such company only when required by the superintendent of insurance for purposes of actual valuation, as provided by the insurance laws of this state; also, a copy of its last annual report, if any was made. 75 v. 572, § 18.

§ 3607. Must also file a waiver—

Any such company desiring to transact any such business in this state by an agent shall file with the superintendent of insurance a written instrument, duly signed and sealed, authorizing

any agent of such company in this state to acknowledge service of process for and in behalf of the company in this state, and consenting that the service of process, mesne or final, upon any such agent, shall be taken and held to be as valid as if served upon the company according to the laws of this or any other state or government, and waiving all claims or right of error by reason of such acknowledgment of service, and that if suit be brought against it after it ceases to do business in this state, and it has no agent in the county in which suit is brought upon whom service of process can be had, as provided in section *thirty-six hundred and seventeen*, service upon it shall be had by the sheriff mailing a copy of the summons or other process, postage prepaid, addressed to it at the place of its principal office located in the state where it was organized, or, if it is a foreign insurance company, to such company at the place of its principal office in the United States, at least thirty days prior to the date of taking judgment in the suit; but the sheriff's return shall show the time and manner of such service. 75 v. 572, § 18.

Requiring submission to jurisdiction of this state is constitutional. Ins. Co. v. Best, 23 Ohio St. 105.

§ 3608. Must file annual statement—Tontine and semi-tontine companies must notify policy holders of time of payment of premium—Statement at end of period—

Every such company doing business in this state shall, annually, file a statement of its condition and affairs in the office of the superintendent of insurance, and in the form and manner required of similar companies organized under the laws of this state; provided, that in such statement no such item as "all other expenditures," or "incidentals," shall be allowed or recognized; but that every item of disbursement or expenditure shall be clearly and distinctly stated and classified when required by the superintendent of insurance, and for the protection of the interests of policy holders in this state, as provided by the laws of this state, and any such company issuing policies on tontine or semi-tontine plan, or which claims to be mutual as to its profits to residents of this state, shall, after the payment of the first premium thereon, and not more than sixty days and not less than ten days prior to the maturity of each and every premium,

thereafter in writing notify every such policy holder, namely the person whose life is insured or the assignee of said policy, if said company has been notified of said assignment, and the address of said assignee given residing in this state, of the time of payment of such premium, and proof of the depositing of said notice of said policy holder or assignee in the post-office by said company or its agent, postage prepaid, to the last address as given by said policy-holder or said assignee to said company shall be conclusive proof of the serving of said notice, and shall set forth fully in said notice the amount of dividend belonging to said policy, when requested by the policy holder if the same be a participating policy, at the end of the tontine or semi-tontine period of each policy, the company issuing the same shall make a statement to the policy holder of all the dividends and profits accruing to said policy, and from what sources the same has been derived. 88 O. L. 307.

§ 3609. Renewal certificates of authority—

If such annual statement be satisfactory evidence to the superintendent of insurance of the solvency and ability of the company to meet all its engagements at maturity, and that the deposit is maintained as above required and provided, he shall issue renewal certificates of authority to the agents of the company, certified copies of which shall be filed in the recorder's office of the county wherein the agency is located, and which renewal certificates shall be the authority of such agents to issue new policies in this state for the ensuing year. 69 v. 150, § 21.

Although agent fail to file such certificate, his acts are valid, and his sureties are liable upon his bond. *Ins. Co. v. Ellis*, 32 Ohio St. 388.

§ 3610. Foreign companies must make desposit and appoint agent for service—

No person shall act in this state, as agent or otherwise, in receiving or procuring applications for life insurance, nor in any manner aid in transacting the business of any company, partnership, or association, incorporated by or organized under the laws of any foreign government, until such company, partnership or association deposits with the superintendent of insurance, for the benefit of the policy holders of the company, partnership or association, who are citizens or residents of the United States, securities to the amount of one hundred thousand dollars, of the

kind required for similar companies of this state, executes a waiver as provided in section *thirty-six hundred and seven*, and appoints an agent or attorney, in each county in this state in which the company establishes an agency, on whom process of law can be served, and files with the superintendent of insurance a duly certified copy of its charter, or deed of settlement, and also a duplicate original copy of the letter or power of attorney of such company, partnership or association, appointing the attorney thereof, which appointment shall continue until another attorney is substituted. 69 v. 150, § 22.

§ 3611. Annual and other statement to be filed—

Such company, partnership or association shall also file a statement of its condition and affairs in the office of the superintendent of insurance, in the form and manner required for the annual statements of similar companies organized under the laws of this state, and shall, annually, on the first day of January, or within sixty days thereafter, file with the superintendent of insurance a statement of all its affairs, in the manner and form required of similar companies of this state, except as to the requirements of schedule of item fourteen, section *thirty-six hundred and three*, which schedule shall be filed only when required by the superintendent, for purposes of actual valuation, as provided by the laws of this state. 69 v. 150, § 24.

§ 3412. Supplementary statements—

Such annual statements shall be accompanied by a supplementary statement, duly verified by the attorney or general agent of the company, partnership or association in this state, giving a detailed description of the policies issued, and those which have ceased to be in force, during the year, the amount of premiums received, and claims and taxes paid in this state and the United States, for the year ending on the thirty-first day of December; and the supplementary statement shall also contain a description of the investments of the company, partnership or association in this country, and such other information as may be required by the superintendent of insurance. 69 v. 150, §§ 25, 26.

§ 3613. Renewal certificates of authority—

If the annual statement be satisfactory evidence to the superintendent of the solvency and ability of the company, partner-

ship or association to meet all its engagements at maturity, he shall issue renewal certificates of authority to the agents of the company, partnership or association, certified copies of which shall be filed by such agents in the recorder's office of the county where the agency is located, and which renewal certificates shall be the authority of such agents to issue new policies in this state for the ensuing year. 69 v. 150, § 26.

§ 3614. Certificates of authority to act as agent—

No person, company or corporation shall, directly or indirectly, act as agent for any such company, partnership or association, either in procuring applications for insurance, taking risks, or in any manner aiding in the transaction of the business of life insurance in this state, until it procures from the superintendent a certificate of authority, which shall be renewable annually, stating that the requirements of this chapter as to such company, partnership or association have been complied with, and setting forth the name of the attorney for such company, partnership or association, a certified copy of which certificate shall be filed in the recorder's office of the county where the agency is to be established, and which shall be the authority of such company, partnership or association, and its agents, to do business in this state. 69 v. 150, § 27.

§ 3615. Penalties for failure to make statements—

If any company, partnership or association, organized without this state, neglect or refuse to make such annual statements, all persons acting in this state as its agents, or otherwise, in transacting the business of insurance, shall be subject to the penalties provided by law in case of the failure of an insurance company, organized under the laws of this state, to make an annual statement. 69 v. 150, § 28.

§ 3616. Duration of licenses—

All licenses granted by the superintendent of insurance in pursuance of this chapter shall continue in force, unless suspended or revoked, until the first day of April of the year next after the date of their issue. 69 v. 150, § 19.

§ 3617. When foreign companies must appoint agents to receive service—

If any company, partnership, or association, organized under the laws of any other state or government, cease to do business in this state according to law, it shall appoint, in the manner herein provided for, in every county wherein an agency existed at the date of such discontinuance, one or more agents for the purpose of receiving service of process in all actions upon policies of insurance issued to the citizens of this state while it was lawfully transacting the business of insurance in this state, and service of process upon such agents, in such actions, shall be held to be as valid as actual service upon the company, partnership, or association; and in every case where no such agent is appointed, the agent last designated and acting for the company, partnership, or association shall be deemed and taken to be duly authorized by it to receive service of process as aforesaid; but the officer who serves such process shall also send a copy of the process served on the agent by mail, to the address of such company, partnership or association, at the place of its principal or home office at the time it ceased to do business in this state, and the return of such officer upon such process shall distinctly show that such copy was mailed as aforesaid at least thirty days before any judgment shall be rendered in such action. 69 v. 150, § 19.

§ 3618. Who are agents to receive service—

If any such company, partnership, or association cease to transact business in this state according to the laws thereof, the agents last designated, or acting as such for it, shall be deemed to continue agents for it, for the purpose of serving process, and for commencing actions upon any policy or liability issued or contracted while it transacted business in this state, and service of such process upon any such agent, for the causes aforesaid, shall be deemed a valid service upon the company, partnership, or association. 69 v. 150, § 23.

§ 3619. Companies may change securities, and collect interest—

Nothing in this chapter contained shall be construed to prevent the company, partnership, or association from collecting the

interest on any securities deposited by it, so long as it continues solvent, and complies with all the provisions of this chapter applicable to it, nor from exchanging them for other securities of equal value, and of the kind hereinbefore named, with the officers having them in trust as aforesaid. 75 v. 572, § 18.

§ 3620. Authority to be withdrawn in certain cases—

If any company, partnership, or association organized without the limits of this state, and doing business within this state, make an application for a change of venue, or to remove any suit or action to which it is a party, heretofore or hereafter commenced in any court of this state, to the United States district or circuit court, or to any federal court, the superintendent of insurance shall forthwith revoke and recall the license of or authority of such company, partnership, or association, to do or transact business within this state; and no renewal or authority shall be granted to such company, partnership, or association for three years after such revocation, and it shall thereafter be prohibited from transacting any business in this state until again duly licensed and authorized. 75 v. 572, § 18.

§ 3621. Policy holders entitled to copies of applications—

Every person holding a policy of insurance issued by any company on the life of any person shall be entitled to be furnished by such company with a copy of any application or document, either written or printed, or both, held by such company, upon which such policy was issued, or which may affect the validity of the same, and the company, upon demand made for such copy, by the holder of such policy, or by any person upon whose life such policy was so issued, shall make, and forthwith furnish to such person, a certified copy of all such applications or friends' certificates, under the hand of the president, secretary, or other proper officer of the company, and under its seal. 74 v. 181, §§ 1, 3.

Construed. *Dickmeier v. Prudential Ins. Co.*, 4 N. P. 13 (C. P.)

§ 3622. Effect of failure to deliver copies—

If such company neglect or fail for thirty days from the time of such demand to furnish to such person a copy of all such papers as are mentioned in the preceding section, and as provided therein, it shall thereafter be forever barred from setting up, by

way of defense to any suit on such policy of insurance, any error or incorrectness, or fraud or misrepresentation of the person making the same, or any mistake therein whatever; and such application or other paper or documents shall thereafter be taken and held, so far as the same may affect any claim under such policy, or any fund secured thereby, to be in all respects true and correct. 74 v. 181, § 2.

§ 3623. Copies of applications to accompany policies issued—

Every company doing business in this state shall return with, and as part of any policy issued by it, to any person taking such policy, a full and complete copy of each application or other document held by it which is intended in any manner to affect the force or validity of such policy, and any company which neglects to do so shall, so long as in default of such copy, be estopped from denying the truth of any such application or other document; and in case such company neglect, for thirty days after demand made therefor, to furnish such copies, it shall be forever barred from setting up, as a defense to any suit on such policy, any incorrectness or want of truth of such application or other document. 74 v. 181, § 3.

Construed. 7 N. P. 322.

§ 3624. Applications, etc., in cipher void—

No company doing business in this state shall take any application; medical certificate, or other document, for insurance upon the life of any person, in cipher, or by character, of any sort other than ordinary written or printed language; and any such application, medical certificate, or other document taken in violation of this section shall be held to be void and of no effect as against any person claiming under any policy of insurance issued thereon. 74 v. 181, § 4.

§ 3625. When a false answer is material—

No answer to any interrogatory made by an applicant, in his or her application for a policy, shall bar the right to recover upon any policy issued upon such application, or to be used in evidence upon any trial to recover upon such policy, unless it be clearly proved that such answer is willfully false and was fraudulently

made, and that it is material, and induced the company to issue the policy, and that but for such answer the policy would not have been issued; and, moreover, that the agent or company had no knowledge of the falsity or fraud of such answer. 57. v. 572, § 18.

False answer constitutes no defense if known to agent, who colluded with assured. Prudential Ins. Co. v. Kilbane, 15 C. C. 62.

Where a foreign insurance company issues a policy to a resident of this state, which provides that it shall be regarded as made under the laws of the foreign state, such contract is nevertheless subject to the laws of this state in determining the rights of the parties in courts of this state. N. Y. Life Ins. Co. v. Black, 12 C. C. 224.

Said section is constitutional. John Hancock Life Ins. Co. v. Warren, 59 Ohio St. 45.

Where life policy is issued on condition that answers and statements in application are warranted true or the policy to be null and void, and some of such answers and statements are untrue in fact, though made innocently, the policy is void *ab initio*, and premium paid by applicant may be recovered back. Conn. Mut. Life Ins. Co. v. Pyle, 44 Ohio St. 19.

§ 3626. When companies estopped from certain defenses—

All companies, after having received three annual premiums on any policy issued on the life of any person in this state, are estopped from defending, upon any other ground than fraud, against any claim arising upon such policy by reason of any errors, omission, or misstatements of the assured, in any application made by such assured, on which the policy was issued, except as to age. 69 v. 150, § 32.

Life insurance company is not liable for premiums paid upon a void policy issued by one of its agents without the knowledge of the insured and under false representations by the agent. Brokamp v. Life Ins. Co., 16 C. C. 630.

False answers referred to apply to application, but not to conditions in policy—what is a false answer. Met. Life Ins. Co. v. Howle, 43 B. 320.

Where a beneficiary is entitled to participate in profits by dividends applied on premiums, and the company has uniformly given notice of amount of dividends and balance to be paid in cash, the policy is not forfeited by failure to pay premium when due, if the company neglects to give such notice; and if the company repudiates the contract and indicates that premium would not be accepted after death of assured, a failure to tender it will not bar recovery on policy. Manhattan Life Ins. Co. v. Smith, 44 Ohio St. 156.

Where policy provides that it shall be void if the assured "shall become so far intemperate as to impair his health, or induce *delirium tremens*," it is not necessary that such condition should follow from a *habit* of drink-

ing to excess, nor that such breach caused the death of the assured. *Conn. Mut. Life Ins. Co. v. Attee, Adm'r*, 3 C. C. 650.

Where, by the terms of the policy, non-payment of premium is ground of forfeiture, and the company has uniformly collected the premiums at the policy holder's residence through a local agent, it is bad faith to instruct the agent not to give the customary notice nor to collect the premium, and if the company upon default procured thereby declares the policy forfeited, the assured may recover the premiums paid, and interest. *Union Central Life Ins. Co. v. Pottker*, 33 Ohio St. 459.

Where policy provided that if a note was given for a premium it should not be a payment, but only an extension of time, and that the company should not be liable for a loss while such note was unpaid—*Held*, that by non-payment of note, policy was not forfeited, but suspended, subject to be revived by payment before death of assured. *McEvoy v. Mich. Mut. Life Ins. Co.*, 3 C. C. 569, affirmed in 28 B. 256. See also *Lowe v. Ins. Co.*, 41 Ohio St. 273, and *Continental Life Ins. Co. v. Hamilton*, 41 Ohio St. 274; also *Gaff v. Penn. Mut. Life Ins. Co.*, 18 B. 310; *Ins. Co. v. Hook*, 43 B. 285; *Ins. Co. v. Myers*, 48 B. 376.

§ 3627. This chapter applies to companies heretofore organized—

All companies organized under any law of this state shall continue corporations for the purpose for which they were chartered, but subject to all the provisions, requirements, and penalties imposed on companies organized under this chapter, and entitled to all the benefits and privileges of this chapter. 69 v. 150, § 29.

§ 3628. Husband may insure his life for benefit of wife and children—Limitations.

Any person may effect an insurance on his life, for any definite period of time, or for the term of his natural life, to inure to the sole benefit of his widow and children, or of either, as he may cause to be appointed and provided in the policy; and the sum or net amount of insurance becoming due and payable by the terms of insurance, shall be payable to his widow, or to his children, for their own use, as provided in the policy, exempt from all claims by the representatives and creditors of such person; provided, that, subject to the statute of limitations, the amount of any premiums for said insurance paid in fraud of creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless, before such payments

notice shall be given the company by a creditor specifying the amount of his claim and the premiums which he alleges have been so fraudulently paid. 93 v. 130.

As to changing terms of policy without consent of wife, and forfeiture by terms of policy, see *Ins. Co. v. Buxer*, 43 B. 361.

When a husband, acting as the agent of his wife, takes out in her name, and for her sole use a policy of insurance on his life, from a company whose charter makes such policy the exclusive property of the wife, and exempts its proceeds from liability for the husband's debts, the wife is, as to such a policy, to be regarded as a *femme sole*. *Insurance Co. v. Applegate*, 7 Ohio St. 292.

When, in such case, representations in regard to the condition of his health are made by the husband, in his application for the policy, which, by the terms of the policy, are made part thereof, the subsequent declarations of the husband, made pending his unauthorized negotiations for the surrender of the policy, and tending to show the false or fraudulent character of the representations upon which the policy issued, are not competent evidence in a suit brought by the wife upon the policy after the husband's death. *Id.*

This section applies to a policy issued by a company organized and conducted without the state. *Cross v. Armstrong*, 44 Ohio St. 613.

In suit by beneficiary, widow, upon policy in the foreign state, an order served in Ohio upon the administrator of assured, who is resident of Ohio, to appear and interplead with widow as to their respective claims, does not give that court jurisdiction of his person, and a judgment against him is void. *Id.*

A policy issued to the wife, insuring the life of the husband, the premiums to be paid by her, is *prima facie* her sole property, and not affected by sec. 3628; the fact that the husband paid the premiums is not sufficient to overcome the legal effect of the terms of the contract. His creditor cannot subject the fund without showing his insolvency, and that payments were made in fraud of the rights of existing creditors. *Weber Loper v. Paxton*, 48 Ohio St. 266.

§ 3629. Wife may insure life of husband—

Any married woman may, by herself, and in her own name, or in the name of any third person, with his assent as her trustee, cause to be insured the life of her husband, for her sole use, for any definite period, or for the term of his natural life, and if she survives such period or term the amount of insurance becoming due and payable by the terms of the insurance shall be payable to her, to and for her own use, free from the claims of the representatives of the husband, or any of his creditors; a policy of insurance on the life of any person, duly assigned, transferred, or made payable to any married woman, or to any person in trust for her, or for her benefit, whether such transfer is made by her husband or other person, shall inure to her separate use and

benefit, and that of her children, independently of her husband or his creditors, or of the person effecting or transferring the same, or his creditors; and the amount of the insurance provided for in the preceding section, or this section, may be made payable, in case of the death of the wife before the period at which it becomes due, to his, her or their children, for their use, as shall be provided in the policy of insurance, or to their guardian, if under age; but if there are no children, upon the death of the wife, such policy shall revert to and become the property of the party whose life is insured, unless it has been transferred as hereinafter provided; and if by its terms, or a transfer thereof, a policy is payable to a married woman solely for her use, she may sell, assign or surrender the same, but the party whose life is insured shall concur in and become a party to the transfer; but if a policy be procured by any person with intent to defraud his creditors, an amount equal to the premium paid thereon, with interest, shall inure to the benefit of his creditors, subject, however, to the statute of limitations. 69 v. 150, § 30; 45 v. 53; §§ 2, 3; 76 v. 160, § 1; S. & C. 737.

See *Fuss v. Kroner*, 24 B. 400, as to rights of wife where company without authority made the policy payable to children instead of the wife.

§ 3630. Mutual protection companies, etc.—Powers—Accumulations and accretions—Amendment of constitution or by-laws—Trustees—What by-laws and regulations may provide—

A company or association may be organized to transact the business of life or accident or life and accident insurance on the assessment plan, for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the families, heirs, executors, administrators or assigns of the deceased members of such company or association, as the member may direct, in such manner as may be provided in the by-laws, and may receive money either by voluntary donation or contribution, or collect the same by assessment on its members, and may accumulate, invest, distribute and appropriate the same in such manner as it may deem proper; that all accumulations and accretions thereon shall be held and used as the property of the members and in the interest of the members, and shall not be loaned to, used, appropriated, or invested for the benefit of any officer or manager of such company or association; and provided,

that no company or association shall issue a certificate for a greater amount than such company or association shall be able to pay from the proceeds of one assessment; and such company or association shall not be subject to the preceding sections of this chapter. Associations organized under this section (3630) may change or amend their constitution or by-laws by the assent thereto in writing of a majority of the members, or by a majority of those present, in person or by proxy, at a meeting held for that purpose, thirty days' notice of such meeting having been given with the proposed changes in full by the acting president personally or by letter mailed to each member, provided, however, that such change shall not take effect or be in force until the same has been submitted to, and approved by the superintendent of insurance. Such associations may provide in their by-laws that there shall be not less than five nor more than fifteen trustees, whose term of office shall not be more than three years. If the term be made more than one year, the by-laws may provide for electing at the first election a portion of them for one year, a portion of them for two years and a portion of them for three years, and thereafter elections shall be for a term of three years. Such associations by their regulations or by-laws may provide for—

1. The time, place and manner of calling and conducting their meetings.
2. The number of members constituting a quorum.
3. The time of the annual election for trustees and the mode and manner of giving notice thereof.
4. The duties and compensation of officers.
5. The manner of election, or appointment, and tenure of office of all officers; the tenure of the trustees shall not be for more than three years, one-third of whom may be elected annually. The provisions of sections 3251 and 3252 shall not apply to associations organized under section 2630.
6. Provided, however, that nothing herein shall be construed to affect or impair the powers or franchises of corporations, companies or associations heretofore organized under the provisions of original section 3630, or under the said section as heretofore amended; and provided also, that such companies or associations may avail themselves of the provisions of this act by amendment

of their articles of incorporation as provided in section 3238a. 88 O. L. 251.

Power of expulsion cannot be exercised by a committee or subordinate branch of the society, except upon clear and express authority, fairly and reasonably exercised. *State v. Fraternal Mystic Circle*, 9 C. C. 364. (Reversed in 39 B. 43, but not on this point.)

In case of unlawful expulsion as member of private corporation for mutual relief and protection remedy is at law; mandamus does not lie. *Fraternal Mystic Circle v. Fritter*, 39 B. 43.

For rights of certificate holders upon dissolution, see *In re Home Mutual Aid Association*, 3 N. P. 145 (C. P.).

The following notes to this section as it stood before the amendment was adopted authorizing the payment to "executors, administrators, or assigns," are probably not applicable to the section as now amended, and printed in this edition.

Such associations are not authorized to provide for the payment of stipulated sums of money to persons other than the family or heirs of a deceased member. *State v. Mutual Relief Association*, 29 Ohio St. 399.

The by-laws and regulations adopted by an association determine the rights of its members; and a fund raised by the association in pursuance of such by-laws and regulations, to be paid to the family or heirs of a deceased member, in the manner therein specified, "unless otherwise directed by such member in his lifetime," will, on failure of the member to give such directions be controlled by such laws and regulations. *Arthur v. Odd Fellows' Ben. Ass.*, 29 Ohio St. 557; *Charch v. Charch, Ex'r*, 57 Ohio St. 561.

Such certificate may be payable to the mother, although she is not a resident of the member's family. *Young Men's Mut. Life Ass. v. Harrison*, 23 B. 360.

When, by the laws and regulations of the association, the fund is to be paid "to the widow, children, mother, sister, father or brother of a deceased member, and in the order named, if not otherwise directed by the member previous to his death," the relatives will take the fund in the order named, unless the member in his lifetime, executed such power of direction or appointment, thus changing the order of payment; and the will of a member, who died seized of real and personal property, devising and bequeathing to his children "my estate and property, real, personal and mixed," without referring to the power, or the subject of it, is not such an execution of the power as will control the fund. *Id.*

A company of another state organized for "insuring lives on the plan of assessment upon surviving members," without limitation, does not come within the class of companies provided for in section 3630. That section does not embrace companies insuring the lives of members for the benefit of others than their families and heirs. *The State v. Moore*, 38 Ohio St. 7.

An amendment to by-laws of a mutual benevolent society, by which sick benefits are reduced, does not affect rights which were vested before adoption of the amendment, although adopted by virtue of a by-law in force when the member joined the society. *Pellazino, Guardian, v. German Cath. St. Joseph's Soc.* (Cin. Sup. Court), 16 B. 27.

Certificate issued by such corporation cannot be made payable to beneficiary "or assigns," nor to any others than family or heirs of member. *State ex rel. v. People's Mut. Ben. Ass.*, 42 Ohio St. 579.

See same decision as to powers of trustees of such corporations.

Nor can the member by will make a stranger the beneficiary. *National Mut. Aid Ass. v. Gonser*, 43 Ohio St. 1. Nor can the member assign his certificate to a creditor, or direct payment to any other person than the beneficiaries named in the rules of the association. *Odd Fellows' Ben. Ass. v. Diebert*, 2 C. C. 462.

Where benefits are authorized in the charter to be paid to the family and dependents, none are authorized to be paid to a brother, not dependent, and a certificate to him is invalid. *Supreme Council Cath. Benev. Union v. McGinness*, 59 Ohio St. 531.

See *State v. Standard Life Association*, 38 Ohio St. 281.

Such associations are not subject to the laws relating to life insurance companies. *State v. Mut. Prot. Ass.*, 26 Ohio St. 19.

Corporations, organized under this section, which do not comply with laws regulating regular mutual life insurance companies, have no power to issue policies guaranteeing payment of fixed amounts. *State v. W. U. M. Life Ins. Co.*, 47 Ohio St. 167. The last clause of this section does not apply to foreign corporations insuring lives of members for benefit of others than their families and heirs. *Ib.*

Where the certificate is payable to his "heirs," and the assured left a widow and one child—*Held*, that the widow and child were heirs, and took the fund in common, in the proportion fixed by the statute of descent and distribution. *Young Men's Mut. Life Ass. v. Pollard*, 3 C. C. 577.

As to vested rights of a beneficiary in a mutual benevolent order, see *Thesing v. Sup. Lodge, etc.*, 24 B. 401.

§ 3630a. Sworn statement of its transactions—Contents of statements.

That each corporation, company, or association now organized, or that may hereafter be organized, in pursuance of sections *thirty-two hundred and thirty-six* and *thirty-two hundred and thirty-eight* of the act to revise and consolidate the general statutes of Ohio, passed June 20, 1879, or under any law of this state, for the purpose of doing business under the provisions of section *thirty-six hundred and thirty* of said act, or for the purpose of doing such business as is contemplated by said section, shall, on the first day of January, each year, or within sixty days thereafter, deposit in the office of the superintendent of insurance a statement, under oath, of all its transactions for the year next preceding said first day of January, and the condition of its business at the close of said year, according to printed blanks, which shall be prepared and furnished by the superintendent of insurance, showing, in detail, the transactions of each company or

association, exhibiting the following facts and items in the following form, to wit :

1. Number of certificates or policies issued during the year.
2. The amount of the indemnity effected thereby.
3. Number of death losses during the year.
4. Number of death losses paid during the year.
5. Total amount received from death assessments during the year.
6. Total amount paid to certificate holders or policy holders for losses during the year.
7. Number of death claims not due, but for which assessments have been made.
8. Number of losses for which assessments have not yet been issued.
9. Number of death claims compromised or resisted during the year, and reasons for such compromise or resistance.
10. Does the association or company charge annual dues?
11. How much are the dues for one thousand dollars (\$1,000) of indemnity?
12. Does the association or company use the death assessments to meet its expenses, in whole or in part?
13. Amount of death assessments used to meet expenses during the year.
14. Do the certificates or policies issued by association or company guarantee a fixed amount to be paid, regardless of amount realized from assessments made to meet the same?
15. If so, state how the amount is guaranteed.
16. What security for such guaranty?
17. Does the association or company issue endowment certificates or policies, or undertake and promise to pay to members during life any sum of money or thing of value?
18. If so, how are these payments or promises provided for?
19. If by reserve, state the amount of reserve.
20. From what source is the reserve fund obtained?
21. How invested?
22. What guarantee or security have the certificate holders for this reserve?
23. How many classes or divisions of endowment certificate or policies have the association or company?
24. How many years required for maturity of first class or division? How many years required for maturity of second class

or division? How many years required for maturity of third class or division? How many years required for maturity of fourth class or division?

25. Number of certificates or policies in force in first class or division. Number of certificates or policies in force in second class or division. Number of certificates or policies in force in third class or division. Number of certificates or policies in force in fourth class or division.

26. Date of organization of association or company.

27. Number of certificates or policies lapsed during the year.

28. Whole number of certificates or policies in force at the beginning and end of the year.

29. The aggregate amount of certificates in force at the beginning of the year.

30. The aggregate amount of certificates lapsed during the year.

31. The aggregate amount of certificates in force at the end of the year.

32. Maximum, minimum, and average age of members received during the year.

33. Has the association or company any agents who have not given bonds?

34. In what state is the association doing business? 77 O. L. 178.

§ 3630b. To make report to superintendent within ninety days—

Within ninety days after the passage of this act, each corporation, company, or association doing business in pursuance of of said section *thirty-six hundred and thirty*, shall report, under oath, to the superintendent of insurance its transactions for the year 1879, on the form required to be furnished in the first section of this act. 77 O. L. 178.

§ 3630c. Failure to file statement to work forfeiture of franchise—Attorney-general to institute proceedings—

Any such corporation, company, or association which shall fail or refuse to file a statement or report, or whose treasurer fails to file a bond as required by this act, shall forfeit its right to do business, which forfeiture the superintendent of insurance shall enforce by proceedings in quo warranto; and it is hereby made

the duty of the attorney general of the state to institute such proceedings, upon his request, in writing. No such corporation, company, or association issuing endowments, certificates or policies, or undertaking, or promising to pay to members during life any sum of money, or thing of value or certificate, or policy guaranteeing any fixed amount to be paid at death, except such fixed amount, or endowments, shall be conditioned upon the same being realized from the assessments made on members to meet them, shall be permitted to do business in this state, until they shall comply with the laws regulating regular mutual life insurance companies. 77 O. L. 178.

Whether a corporation which has misused or abused its franchises should be ousted, rest in sound discretion of the court. *State ex rel. v. People, etc., Assn.*, 42 Ohio St. 579.

§ 3630d. Superintendent of insurance may cause examination to be made—

The superintendent of insurance may, whenever he has good reason to believe that the business of any such corporation, company, or association is not being legally and honestly conducted, or that such corporation, company, or association is exercising powers or franchises not conferred by law, cause an examination of its affairs to be made at the expense of such corporation, company, or association, by one or more disinterested persons, and at an expense not to exceed five dollars a day for each person so employed; and if, upon such examination, it shall appear that such corporation, company, or association is exercising powers or franchises contrary to law, the superintendent of insurance shall institute proceedings in quo warranto against the same, in the manner provided in section three of this act. 77 O. L. 178.

**§ 3630e. Rules under which foreign corporations or associations may do business in this state—
Certificate of authority to transact business—
Revocation of certificate—Annual statement—
Fees to be paid to superintendent of insurance—
Obligations to be equal to those imposed by
other states—Companies and associations may
do life and accident business on assessment
plan—Penalties—**

Any corporation, company, or association organized under the

the laws of any other state of the United States, to transact the business of life or accident or life and accident insurance on the assessment plan, shall, as a condition precedent to transacting business in this state, comply with the following conditions, to-wit: Deposit with the superintendent of insurance (1) a certified copy of its charter or articles of incorporation; (2) a certificate from the insurance commissioner, or superintendent of its own state showing its authority to do such business; (3) a certificate from said commissioner or superintendent or other like authority of its own state that corporations, companies, or associations of this state, engaged in life or accident insurance on the assessment plan as the case may be, are, upon complying with the laws of said state, legally entitled to do business in such state; (4) a statement under the oath of its president and secretary or like officers, in the form by the superintendent of insurance required, of its business for the preceding year; (5) a certificate under the oath of its president and secretary, or like officers, that such corporation, company, or association is paying, and for the twelve months next preceding has paid the maximum amount named in its policies or certificates; (6) a copy of its policy or certificate, application and by laws, which must show that the liabilities of the assured or members are not limited to fixed or artificial premiums; (7) evidence satisfactory to said superintendent that such corporation, company, or association has accumulated and maintained a fund securely invested in securities permitted by law of its incorporation, not less in amount than the proceeds of one periodical payment by, or an assessment on all certificate or policy holders, thereof, and that such fund is held solely for the benefit of certificate or policy holders and can only be used for the purposes provided in the laws of the state where incorporated; provided, that said fund in the case of accident companies or accident associations shall not be less than five thousand dollars, and need not be more than ten thousand dollars; (8) that such corporation, company or association, except it be an accident insurance corporation, company or association, does not issue certificates or policies upon the life of any person more than sixty-five years of age, or upon any life in which the beneficiary named has not a legal insurable interest; provided, license to do business in this state shall not be delivered to any such corporation, company or association until it shall have filed with the

superintendent of insurance an appointment of an attorney within this state upon whom service of process may be had. The superintendent of insurance shall thereupon issue to such corporation, company or association a certificate of authority to transact its business in the State of Ohio, which said certificate of authority must be renewed annually, and it shall be the duty of the superintendent of insurance to refuse such certificate to any such corporation, company or association, when in his judgment such refusal will best promote the public interest; provided, that all decisions by him made shall be subject to review by courts of competent jurisdiction. And said authority shall be revoked whenever the superintendent of insurance on investigation or examination finds that such corporation, company or association is not paying the maximum amount named in its policies or certificates in full; that said corporation, company or association is transacting business fraudulently or illegally, or that the statement of its condition and affairs required under the provisions of this section are false and fraudulent, or for failure to file the annual statement; and upon such revocation, the superintendent shall cause notice thereof to be published for four weeks in some newspaper published in the county of Franklin, and no new insurance shall thereafter be written by such corporation, company or association or any of its agents in this state; provided, that it shall be unlawful for any agent of such corporation, company or association to transact business in this state without being first regularly appointed thereby and being licensed by a certificate of authority issued by the superintendent of insurance. Each such corporation, company or association shall, annually thereafter, and on or before the first day of March, make and file in the office of the superintendent of insurance a statement in the form by said superintendent required of its business for the twelve months next preceding the thirty-first day of December. The fees to be paid by each such corporation, company or association to the superintendent for the authority to such corporation, company or association and its agents under the license granted by him to each corporation, company or association, to transact business in the State of Ohio, shall be as follows: For filing copy of charter or articles of incorporation, twenty-five dollars; for filing each annual statement, twenty-dollars; for issuing certificate of authority or license to company or associa-

tion, one dollar, for issuing license to each agent, one dollar; for affixing seal and certifying any paper, one dollar. Provided, that any company or association may pay to the superintendent the sum of twenty-five dollars for licenses to its agents for the year, and by so doing shall be entitled without further charge to licenses for as many agents as it may choose to appoint; provided, also, that when any other state or country shall impose any obligations in excess of those imposed by this act upon any such corporation in this state, a like obligation shall be imposed on similar corporations, and their agents, of such state or country doing business in this state: and provided, also, that such corporation, company or association in transacting business in this state shall be subject only to section *thirty-six hundred and thirty* of the Revised Statutes and the section [s] supplementary thereto; and provided, further, that such corporation, company or association shall be authorized to transact in this state the business of life or accident or life and accident insurance on the assessment plan, for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the families, heirs, executors, administrators or assigns of the deceased members of such corporation, company or association as the member may direct, notwithstanding such corporation, company or association may have been organized on the assessment plan and authorized by the laws governing it to issue policies insuring lives on the plan of assessment upon surviving members without limitation. Whenever any officer or agent of any such corporation, company or association shall fail or neglect to comply with or violate any of the provisions of this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in a county jail for not more than thirty days, or both, at the discretion of the court. 88 O. L. 251.

Mandamus to compel issuance of license refused because foreign state does not admit similar Ohio companies. *State ex rel. v. Moore*, 39 Ohio St. 486.

The business of foreign companies authorized by this section does not include insuring lives or members for benefit of others than their families and heirs—that the beneficiary has “an insurable interest” is not sufficient. *State v. W. U. Mut. Life Ins. Co.*, 47 Ohio St. 167.

The rule permitting a change of beneficiary only in the mode specified in the by-laws is the same in case of a foreign corporation under § 3630e as in

case of a domestic corporation under § 3630. *Charch v. Charch*, Ex'r, 57 Ohio St. 261.

Although an Ohio insurance company having capital stock cannot do business on the assessment plan, a foreign company organized where such business is permitted may transact business in Ohio on that plan; but what constitutes such business must be determined by the laws of this state. *Ohio ex rel. v. Life Ins. Co.*, 58 Ohio St. 1.

The supplementary act of April 12, 1880 (77 O. L. 178), does not enlarge the class of companies provided for in § 3630, but merely prescribes the regulations under which *such* companies, whether domestic or foreign, may do business in the state, and subjects them to additional supervision. *State v. Moore*, 38 Ohio St. 7.

§ 3630f. Where action against such association may be brought—

An action may be brought against any such corporation, company or association, organized under the laws of Ohio, or against any such foreign corporation, company or association doing business in Ohio, in any county of this state where such cause of action arises, and summons may be issued and service had as provided in chapter six, subdivisions one and two, title one, part third, of the Revised Statutes of Ohio, the provisions of which chapter are hereby made applicable in such cases. 77 O. L. 178.

§ 3630g. To whom policies not to issue, and penalty—

No such corporation, company or association shall issue a certificate or policy to any person, until such person has been first subjected to a thorough medical examination by a regularly educated physician and found to be a good risk, nor to any person above the age of sixty-five years, nor under the age of fifteen years. Any trustee, officer, agent or employe of any such corporation, company or association, who shall knowingly insure or cause or permit to be insured any person without that person's knowledge or consent, or any fictitious person or any person over sixty-five or under fifteen years of age, or any sickly or infirm person, or who shall issue a certificate or policy of insurance for any such corporation, company or association which has not complied with the laws of this state and received from the superintendent of insurance a certificate of such compliance, or who shall knowingly violate any of the provisions of section 3630, revised statutes, and the sections supplementary thereto, and any physician or other person who shall knowingly aid in or abet in any manner, any such trustee, officer, agent or employe in effecting

such insurance, or insurance on his own life, shall be fined not more than one thousand dollars, nor less than one hundred dollars, or imprisoned not more than six months, or both. But the provisions of this supplementary section in respect to the age and medical examination of persons to whom certificates or policies shall issue; shall not apply to such corporations, companies or associations doing a purely accident business. 82 O. L. 138.

§ 3630h. Expenses, how paid—

The expenses of such corporations, companies, or associations shall be met by fixed annual payments, or by assessments made and designated to be for such expenses; but such assessments shall, in no case, be made or become a part of any assessments to pay a loss by death; and no part of the mortuary fund shall in any case be used to pay expenses. 80 O. L. 179.

§ 3630i. Companies for insuring against accidental personal injury and loss of life, and against expenses and loss of time occasioned by injury or sickness—Expenses—Expense, loss and guaranty funds—Notice to persons assessed—Distribution to certificate holders—Bond required—Bond and securities required of purely accident company—Penalty.

Companies consisting of five or more citizens of Ohio may be organized under this chapter and section for the special purpose of insuring against accidental personal injury and loss of life, sustained while traveling by railroad, steamboat or other mode of conveyance, and making all and every insurance connected with accidental loss of life and personal injury, sustained by accident, of every description whatever, and against expenses and loss of time occasioned by injury or sickness, and on such terms and conditions, and for such periods of time, and confined to such countries and localities, and to such persons as from time to time may be provided in the by-laws of the company; and the expenses of such corporations, companies or associations, shall be met by fixed annual payments, payable quarterly or otherwise, or by assessments on the members, payable as may be provided in the by-laws; and on either plan there may be included in such payments or assessments, a certain per cent. thereof, to be fixed by the by-laws, which, when collected, shall be credited on the books

of the company to the expense fund, and the residue thereof shall be so credited to the fund to pay losses and create a reserve or guarantee fund for the payment of losses and liabilities, and said funds shall be kept separate, and shall never be interchanged or used for purposes other than those for which they were respectively collected as aforesaid; provided, that the assessed shall be notified at the time of the collection of each payment the per cent. thereof that is collected to pay expenses, and the per cent. thereof that is collected to pay losses and create a guarantee fund; but nothing herein shall prevent the company from distributing to certificate holders the surplus in the accident fund and the surplus arising from the reserve on lapsed and canceled certificates as provided in the by-laws of the company; and provided, that companies organized under the provisions of this section shall, before engaging in business as provided in this section, execute a bond in the sum of one hundred thousand dollars to the State of Ohio, with security to the acceptance and approval of the superintendent of insurance, for the use and benefit of all persons holding policies or certificates in such company, conditioned that such company shall credit upon the books of said company, all moneys received by them under the provisions of this section, keep the funds separate and not use or interchange them for purposes [other] than those for which they were respectively collected, and that they will apply and pay out said funds to and for the purposes provided for in this section, which bond, when so executed and approved, shall be deposited with and held by the superintendent of insurance. Provided further, that any corporation, company or association, organized for the purpose of doing a purely accident insurance business, and which corporation, company or association, creates a reserve or guarantee fund from the premiums collected by assessments or otherwise, as provided in the by-laws of the corporation, company or association, shall not be subject to the preceding part of this section, relating to the deposit of a bond in the sum of one hundred thousand dollars; but the treasurer of all such corporations, companies or associations shall, before commencing business, deposit with the superintendent of insurance a bond with approved securities, to the acceptance of said superintendent in the sum of ten thousand dollars, for the use and purposes provided in the preceding portion of this section; and every such corporation, company or association shall invest, as provided in section 3598 of the Revised

Statutes of Ohio, so much of the reserve or guarantee fund, in excess of ten thousand dollars, as shall equal at least two and one-half per cent. of all premiums or assessments collected from policies or certificates in force, on the last day of June and December of each year, until said reserve or guarantee fund shall be equal to two dollars for every five thousand dollars of insurance in force; securities for said reserve, as herein provided, shall be deposited with the superintendent of insurance on the last day of June and December of each year, or within thirty days thereafter, to be held by said superintendent for the benefit and protection of policy or certificate holders. Provided, that if such corporation, company or association shall at any time cause all of its unexpired policies or certificates to be paid, canceled or reinsured, and all its liabilities under such policies or certificates thereby to be extinguished, or to be assumed by some other responsible company authorized to do business in this state, the superintendent of insurance shall, on application of such company, verified by the oath of its president or secretary, and on being satisfied by an examination of its books and of its officers, under oath, that all of its policies or certificates are so paid, canceled, extinguished or reinsured, deliver up to it such security. Any corporation, company or association, or officer thereof, violating any of the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail where said officer resides, for not less than thirty days nor more than one year, or both, at the discretion of the court. 91 O. L. 332.

**§ 3631. No agent to collect dues without giving bond—
Bond of treasurer of association—**

No agent or officer of any such corporation, company, or association shall be permitted to collect or receive any dues, assessments, or donations for or on account of the same, until he executes jointly, with two responsible sureties, a bond to the corporation, company, or association, to the approval of the trustees thereof, in such sum as they shall prescribe, conditioned for the payment of all such dues, assessments, and donations over to the proper officer of the company; and all receipts of any such company or association shall be paid into the hands of the treasurer thereof, who shall, before assuming the duties of his office, give bond in

the sum of not less than ten thousand nor more than fifty thousand dollars, as the said superintendent may determine, with not less than three sureties, to be approved by the superintendent of insurance, and conditioned for the faithful accounting for and proper payment and disbursement to the legitimate purposes of the company or association of all the money thereof which comes into his hands. Said bond of the treasurer shall be examined as to its sufficiency, annually, and shall be renewed whenever the superintendent of insurance shall require, and, with the approval of the superintendent of insurance indorsed thereon, shall be filed with the secretary of state.

§ 3631a. Mutual benefit, etc., societies excepted—When subject to insurance laws—Bond of treasurer—

This act (viz.: sections *thirty-six hundred and thirty (a)* to *thirty-six hundred and thirty-one*) shall not apply to any association or [of] religious or secret societies or to any class of mechanics, express, telegraph or railroad employes, or ex-union soldiers, formed for the mutual benefit of the members thereof, and their families or blood relatives exclusively, or for purely charitable purposes; provided that any such association or class which may become subject to the provisions of sections *thirty-six hundred and thirty (a)*, *thirty-six hundred and thirty (c)*, and *thirty-six hundred and thirty (d)* of the Revised Statutes of Ohio, may file with the superintendent of insurance notice in writing of such desire, signed by the president of such association or class, and attested by the secretary thereof; and thereupon such association or class shall become subject to all the terms and provisions of said sections *thirty-six hundred and thirty (a)*, *thirty-six hundred and thirty (c)*, and *thirty-six hundred and thirty (d)* of said Revised Statutes; the superintendent of insurance shall thereupon immediately provide such association or class with proper blanks for furnishing the statement of the condition of such association or class, as provided in said section *thirty-six hundred and thirty (a)*, and such association or class shall make such report within sixty days thereafter, and thenceforward annually, as in case of other insurance companies, which report shall be included by said superintendent of insurance in his annual tabulated report, in the same manner as the reports of other companies and subject to

the fees prescribed in section *two hundred and eighty-two* of the Revised Statutes of Ohio; provided, further, that the treasurer of any association or class which shall avail itself of the benefits of this enactment shall be required to give bond in the same manner as is provided in section *thirty-six hundred and thirty-one*, Revised Statutes of Ohio; said bond to be conditional, approved, and renewed, as provided in said section. 94 O. L. 354.

(§ 3631-1.) Sec. 1. Insurance companies forbidden to discriminate against persons of African descent in the rate of premiums—

No life insurance company now organized or doing business, or that may hereafter be organized and do business within this state, shall make any distinction or discrimination between white persons and colored, wholly or partially of African descent, as to the premiums or rates charged for policies upon the lives of such persons; nor shall any such company demand or require greater premiums from such colored persons than are at that time required by such company of white persons of the same age, sex, general condition of health and hope of longevity; nor shall any such company make or require any rebate, diminution, or discount upon the sum to be paid on such policy in case of the death of such colored person insured, nor insert in the policy any condition, nor make any stipulation whereby such person insured shall bind himself or his heirs, executors, administrators and assigns to accept any sum less than the full value or amount of such policy in case of a claim accruing thereon by reason of the death of such person insured, other than such as are imposed upon white persons in similar cases; and any such stipulation or condition so made or inserted shall be void. 86 O. L. 163.

(§ 3631-2.) Sec. 2. What shall be done when application of persons of color is refused—

Any such company which shall refuse the application of any such colored person for insurance upon such person's life, shall furnish such person with the certificate of some regular examining physician of such company who has made examination of such person, stating that such person's application has been refused, not because such person is a person of color, but solely upon such grounds of the general health and hope of longevity of such

person as would be applicable to white persons of the same age and sex. 86 O. L. 163.

(§ 3631-3.) Sec. 3. Penalty for violating this act—

Any corporation, or the officer or agent of any corporation, violating any of the provisions of this act, either by demanding or receiving from such colored person such different or greater premium, or by allowing any discount or rebate upon the premiums paid or to be paid by white persons of the same age, sex, general condition of health and hope of longevity, or by making or requiring any rebate, diminution, or discount upon the sum to be paid upon a policy in case of the death of such colored person insured, or by failing to furnish the certificate required by section second, shall for each offense be fined not less than one hundred nor more than two hundred dollars. But nothing in this act shall be so construed as to require any agent or company to take or receive the application for insurance of any person. 86 O. L. 163.

(§ 3631-4.) Sec. 1. Distinction or discrimination among insurants contracts or agreements not expressed in policy, or inducements to insure, unlawful—

That no life insurance company doing business in Ohio, shall make or permit any distinction or discrimination in favor of individuals between insurants of the same class and equal expectation of life in the amount or payment of premiums, or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract it makes; nor shall any such company, or any agent thereof, make any contract of insurance, or agreement as to such contract, other than is plainly expressed in the policy issued thereon; nor shall any such company or agent pay or allow, or offer to pay or allow, as inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy contract of insurance. 90 O. L. 345.

(§ 3631-5.) Sec. 2. Penalty for violation by corporation—

Every corporation which shall violate any of the provisions of this act shall be fined in any sum not less than one hundred dollars nor exceeding five hundred dollars, to be recovered by action in the name of the state, and the amount so recovered shall be paid into the county treasury for the benefit of the common school fund. 90 O. L. 345.

(§ 3631-6.) Sec. 3. Penalty for violation by officer or agent of corporation—

Every officer or agent of any such corporation who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor exceeding five hundred dollars, or imprisoned in the jail of the county not exceeding thirty days, or both, at the discretion of the court, and shall pay the costs of prosecution. 90 O. L. 345.

(§ 3631-7.) Sec. 4,

It shall be the duty of the superintendent of insurance, upon being satisfied that any such corporation, or any agent thereof, has violated any of the provisions of this act, to revoke the license of the company, or agent, so offending, and no license shall be granted to such company, or agent, for one year after such revocation. 90 O. L. 345.

(§ 3631-8.) Sec. 1. To enable societies or benevolent associations to own stock in buildings used for lodge or meeting purposes—

Whenever any incorporated company organized under the laws of the State of Ohio, and having a capital stock, including corporations organized as provided in section *thirty-eight hundred and sixty-eight*, revised statutes, and the acts amendatory and supplementary thereto, is organized for the purpose of erecting and maintaining a building, any portion of which is intended for or to be occupied by two or more incorporated companies not having a capital stock, including religious, scientific and beneficial associations heretofore incorporated under the provisions of sections sixty-six to seventy of "an act to provide for the creation and regulation of incorporated companies in the State of Ohio," passed May 1, 1852, and the several acts supplementary and

amendatory thereto, as a lodge-room, chapel, or place of meeting for their members, the said incorporated companies, societies or benevolent associations may each subscribe for, purchase, or become the owner or owners, by donation or otherwise, of the whole or any portion of the capital stock of said incorporated company organized for the purpose of erecting and maintaining such building aforesaid. 80 O. L. 177.

(§ 3631-9.) Sec. 2. Liable in corporate capacity same as individuals—

That each of said incorporated companies, societies and associations shall be liable in its corporate capacity for and on their respective shares of said capital stock so subscribed, purchased, and owned by it, the same as if the same were held and owned by an individual. 80 O. L. 177.

(§ 3631-10.) Sec. 3. Directors—When and how elected—

That whenever two or more of such incorporated companies, societies or benevolent associations shall subscribe purchase or own all the capital stock of said incorporated company organized for the purpose of erecting and maintaining such building, each of said incorporated companies, societies, or benevolent associations, shall elect three members of its company, society or association to act as directors of said incorporated company as soon as all the stock is subscribed and ten per cent is paid, and shall thereafter at its first stated meeting in January of each year, elect three such directors. That the electors so elected and their successors in office shall comprise the board of directors of said incorporated company, and have all the powers conferred by law on the directors of incorporated companies having a capital stock, and said directors need not be the owners or holders of any of the capital stock of said corporation. 80 O. L. 177.

(§ 3631-11.) Sec. 1. Fraternal beneficiary association defined—Lodge system and form of work and government—Death, sick or physical disability benefits, etc.—

A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized and carried on for the sole benefit of its members [and] their beneficiaries. Each association shall have a lodge system, with

ritualistic form of work and representative form of government, and may make provision for the payment of benefits in case of death, sickness, temporary or permanent physical disability, either as the result of disease, accident or old age, provided the period of life at which payment of physical disability benefits on account of old age commences, shall not be under seventy (70) years. Each association or order may also make provision for withdrawal of those of its members unable or unwilling to continue their payments at any time after two years of membership, provided, however, that such withdrawal benefits shall not exceed the amount contributed by such members, and it may also make provisions for the payment of final benefits, at any time after ten years of membership, as may be provided by its constitutional laws. The fund from which the payment of such benefits shall be made, and the fund from which the expenses of any such association shall be defrayed shall be derived from assessments, dues or other payments collected from its members. Payment of death benefits shall be to the families, heirs, blood relatives, affianced husband or affianced wife of, or to persons dependent upon the members. Such associations shall be governed by this act, and shall be exempt from the provisions of the insurance laws of this state, and no law hereafter passed shall apply to them unless they be expressly designated therein. Any such society, order or association may create, maintain and disburse a reserve fund in accordance with its constitutional by-laws. Such reserve fund (if any) shall represent certain prescribed accumulations or percentages retained for the benefit of the members or their beneficiaries, and no part thereof shall be used for expenses. 92 O. L. 360.

(§ 3631-12.) Sec. 2. Conditions upon which operating society, order or association may continue—

Any society, order or association of this, or any other state, province or territory, now operating in this state, and having lodges, councils or branches duly established or organized in this state, may continue their business, provided that they hereafter comply with the provisions of this act regulating annual reports and the designation of the superintendent of insurance as the person upon whom process may be served as hereinafter provided. 92 O. L. 360.

(§ 3631-13.) Sec. 3. Conditions upon which foreign associations admitted—

Any association operating within the description as set forth in section 1 of this act, organized under the laws of any other state, province or territory, and not now doing business in this state shall be admitted to do business within this state, when it shall have filed with the superintendent of insurance, a duly certified copy of its charter and articles of association, and a copy of its constitution or laws, certified to by its secretary or corresponding officer, together with an appointment of the superintendent of insurance of this state, as the person upon whom process may be served as hereinafter provided; and provided that such association shall be shown by certificate to be authorized to do business in the state, province or territory in which it is incorporated or organized, in case the laws of such state, province or territory shall provide for such authorization; and in case the laws of such state, province or territory do not provide for any formal authorization to do business on the part of any association, then such association shall be shown to be conducting the business in accordance with the provisions of this act, for which purpose the superintendent of insurance of this state may personally, or by some person to be designated by him, examine into the condition, affairs, character and business methods, accounts, books and investments of such association at its home office, which examination shall be at the expense of such association, and shall be made within thirty days after demand therefor, and the expense of such examination shall be limited to fifty dollars (\$50).
92 O. L. 360.

(§ 3631-14.) Sec. 4. Annual report of associations—

Every such association doing business in this state shall, on or before the first day of March of each year, make and file with the superintendent of insurance of this state, a report of its affairs and operation during the year ending on the thirty-first day of December immediately preceding, which annual report shall be in lieu of all other reports required by any other law. Such report shall be upon blank forms, to be provided by the superintendent of insurance, or may be printed in pamphlet form, and shall be verified under oath by the duly authorized officers of such association, and shall be published, or the substance thereof, in the

annual report of the superintendent of insurance, under a separate part, entitled "fraternal beneficial associations," and shall contain answers to the following questions:

I. INCOME DURING THE YEAR.

Amount received for assessments	\$	_____
Rents, interest and dividends on stocks and bonds		_____
All other sources, viz.		_____
Total amount received during the year		_____

II. EXPENDITURES DURING THE YEAR.

Benefits, losses and claims paid	\$	_____
Sick benefits paid		_____
Salaries and other compensation of officers and for clerical force		_____
Paid for rent		_____
Paid for office expenses, lodge supplies, organization of lodges or branches; of building up the same, printing, advertising and all other expenditures		_____
Total amount of expenditures during the year		_____

III. ASSETS.

Bonds and stocks	\$	_____
Loans on mortgages, evidenced by notes and otherwise		_____
Loans on other collateral and security		_____
Real estate		_____
Cash in bank		_____
Securities deposited in different states, if any		_____
Total other assets, viz.,		_____
Total assets		_____

IV. LIABILITIES.

Losses and claims due and unpaid	No.	_____	\$	_____
Losses and claims reported but not due	No.	_____		_____
Salaries due and unpaid				_____
Due for borrowed money				_____
All other liabilities, viz.,				_____
Total liabilities				_____

V. EXHIBIT OF MEMBERSHIP.

Membership and amount in force at the end of

the year preceeding for which the report is
made No. — \$ —
Give number of members and amount of certificates
issued during the year No. — —
Total during the year No. — —
Deduct members and amount of certificates retiring by
withdrawal or suspension during the year, No. — —
Deduct members who have died during the year, and
face amount of certificates paid No. — —
Total members in good standing December 31,
189— No. —

O. L. 360.

**(§ 3631-15.) Sec. 5. Appointment of attorney upon whom
process may be served—Certified copies as
evidence—Sufficiency of service—Notice of
service and forwarding of copy of process—
Fee to be paid at time of service—Record
of processes served—**

Each such association now doing or hereafter admitted to do business within this state and not having its principal office within this state, and not being organized under the laws of this state, shall appoint in writing the superintendent of insurance or his successors in office, to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it, which is served on said attorney, shall be of the same legal force and validity as if served upon the association, and that authority shall continue in force so long as any liability remains outstanding in this state. Copies of such certificate, certified by said superintendent of insurance, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such attorney shall be deemed sufficient service upon such association. When legal process against any such association is served upon said superintendent of insurance, he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and he shall, within two days after such service, forward in the same manner, a copy of the process

served on him to such officer. The plaintiff in such process so served shall pay to the superintendent of insurance, at the time of such service, a fee of two dollars (\$2), which shall be recovered by him as a part of the taxable costs, if he prevails in the suit. Superintendent of insurance shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made, and by whom made. 92 O. L. 360.

(§ 3631-16.) Sec. 6. Permit to do business—Fee—Annual fee thereafter—

Superintendent of insurance of this state shall, upon the application of any association having a right to do business within this state, as provided by this act, issued to such association a permit, in writing, authorizing such association to do business within this state, for which certificate and all proceedings in connection therewith, such association shall pay to said superintendent a fee of twenty-five dollars (\$25). This fee shall be paid annually thereafter when report is filed. 92 O. L. 360.

(§ 3631-17.) Sec. 7. Procedure and requirements in formation of association—annual meetings for election of managers or trustees—

Seven or more persons, citizens of the United States, and a majority of whom are citizens of this state, who may desire to form a fraternal beneficiary association, as defined by this act, may make, sign, seal and acknowledge before some officer competent to take the acknowledgment of deeds, a certificate in writing in which shall be stated:

(A) The names and places of residence of applicants.

(B) Proposed corporate name of the association, which shall not too closely resemble the name of any other similar organization.

(C) The object or purpose for which the incorporation is sought, which shall not include more liberal powers than are granted by this act.

(D) Location of the principal office of the corporation.

(E) Number of trustees, directors, or similar officers and their names, who shall manage the concerns of the corporation for the first year, or until the ensuing annual meetings.

Meetings for the election of managers or trustees shall be held

annually, and as far as possible during the month of January of each year, according to the regulations of the constitution and laws of the association. When the said certificate has been duly signed and acknowledged by the incorporators thereof, it shall be submitted to the attorney-general for his approval in conformity with this act, and after the said approval shall have been indorsed thereon, shall be duly recorded in the county in which the home office of the corporation is located, and a certified copy thereof immediately forwarded to the superintendent of insurance with a certified list of officers in charge of the association, with their residences and the location of the home office. In addition to this proof, satisfactory to said superintendent of insurance, shall be furnished by two of the officers of the said association, that at least one hundred subscribers for certificates of membership have been secured in said association, and that there has been deposited to the credit of said association for the payment of death and other claims, and which amount cannot be used for expenses, the sum of five thousand dollars, which sum, if advanced by the trustees, officers or directors, may be repaid to them from time to time from the proceeds of an expense fund to be created for this purpose. Associations of this state of similar character to those defined by this act, may, by resolution of their present board of managers or trustees, incorporate under this act, as herein provided, and the corporate existence of which shall then and there continue as if such association had been originally incorporated under the same. 92 O. L. 350.

(§ 3631-18.) Sec. 8. Benefits not liable to attachment, seizure, etc.—

The money or other benefit, charity, relief or aid to be paid, provided or rendered by any association authorized to do business under this act shall not be liable to attachment by a trustee, garnishee, or other process, and shall not be seized, taken, appropriated or applied by any legal or equitable process, or by operation of law, to pay any debt or liability of a certificate holder, or of any beneficiary named in a certificate, or any person who may have any rights thereunder. 92 O. L. 360.

(§ 3631-19.) Sec. 9. Meetings of legislative or governing body, and votes cast in subordinate lodges, outside state—

Any such association organized under the laws of the state, may provide for the meetings of its legislative or governing body in any other state, province or territory, wherein such association shall have subordinate lodges, and all business transacted at such meetings shall be valid in all respects, as if such meetings were held within this state, and where the laws of any associations provide for the election of its officers by votes to be cast in its subordinate lodges, the votes so cast in its subordinate bodies in any other state, province, or territory, shall be valid, as if cast within this state. 92 O. L. 360.

(§ 3631-20.) Sec. 10. Penalty for false or fraudulent statement or representation—

Any person, officer, member, or examining physician who shall knowingly or willfully make any false or fraudulent statement or representation, in or with reference to any application for membership, or for the purpose of obtaining any money or benefit in any association transacting business under this act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days, or more than one year, or both, in the discretion of the court; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall willfully make any false statement in any verified report of declaration under oath required or authorized by this act, shall be guilty of perjury, and shall be proceeded against and punished as provided by statute of this state in relation to the crime of perjury. 92 O. L. 360.

(§ 3631-21.) Sec. 11. Exclusion of association—Proceedings in injunction—Reinstatement—Penalty for acting for association so enjoined or prohibited—

Any such association refusing or neglecting to make the report as provided in this act shall be excluded from doing business

in this state. Said superintendent of insurance must within sixty days after failure to make such report, or in case any such association shall exceed its powers or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of this act, give notice in writing to the attorney-general, who shall immediately commence an action against such association to enjoin the same from issuing any new business. And no injunction against any such association shall be granted by any court, except on application by the attorney-general at the request of the superintendent of insurance. No association so enjoined shall have authority to continue to do the business of soliciting new members until such report shall be made or overt act or violations complained of shall have been corrected, nor until the costs of such action be paid by it, provided the court shall find that such association was in default as charged, whereupon the superintendent of insurance shall reinstate such association, and not until then shall such association be allowed to secure new members in this state. Any officer, agent, or person acting for any association or subordinate body thereof within the state, while such association shall be so enjoined or prohibited from doing business pursuant to this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than twenty-five dollars or more than one hundred dollars. 92 O. L. 360.

§ 3631-22.) Sec. 12. Who subject to penalty provided in preceding section—

Any person who shall act within this state as an officer, agent, or otherwise, for any association, which shall have failed, neglected or refused to comply with, or shall have violated any of the provisions of this act, or shall have failed or neglected to procure from the superintendent of insurance a proper certificate of authority to transact business as provided for by this act, shall be subject to the penalty provided in the last preceding section for the misdemeanor therein specified. 92 O. L. 360.

**§ 3631-23. Conflicting or inconsistent laws, repealed—
Lodges, etc., to which act is applicable—**

All laws or part[s] of laws in conflict with or inconsistent with this act are, and the same are hereby repealed, and nothing in this act shall be held to affect or apply to grand or subordinate

lodges of Masons, Knights of Pythias, Odd Fellows, or similar orders that do not have as their principal object the issuance of insurance certificates of membership. Nor shall anything therein contained apply to lodges or orders of a purely religious, charitable or benevolent description, paying exclusively sick, funeral or death benefits to members, their families or blood relatives, or dependents, or for purely charitable purposes, and not operating with a view to profit, nor shall any such organization be required to make any report under this or any other section of the insurance laws, and provided further, that no society, lodge or body of any secret or fraternal society or organization of employes of any particular trade, firm, or corporation paying only sick benefits not exceeding two hundred and fifty dollars (\$250) in the aggregate to any person in any one year, or a funeral benefit to those dependent on a member not exceeding three hundred and fifty dollars (\$350), shall be required to make any report thereof under this article, or under other articles of the insurance laws.

94 O. L. 354.

(§ 3631-24.) Sec. 1. Incorporation of companies for making life insurance on the stipulated premium plan—

That five or more persons may, in the manner and according to the forms and requirements for the incorporation of insurance companies mentioned in sections 3588 and 3589 of the Revised Statutes and in this act, become an incorporated company for the purpose of making insurance upon the lives and health of individuals, and every insurance appertaining thereto or connected therewith, on the stipulated premium plan as defined and regulated herein.

93 O. L. 343.

(§ 3631-25.) Sec. 2. Completion of organization—Deposit of securities to be made with superintendent—

No such corporation, company or association shall commence the business of life insurance until at least two hundred persons eligible under the proposed plan of the organization shall have subscribed in writing to be insured therein in the aggregate amount of at least five hundred thousand dollars, and shall have each paid or become obligated to pay the amount of one annual stipulated net premium for their age at entry on the amount of

insurance severally subscribed for, and which shall be held in trust for the benefit of the members of said corporation or their beneficiaries; nor until the superintendent of insurance shall have further certified that it has complied with the provisions of this act and is authorized to transact the business of insurance. Provided, however, that every corporation incorporating or reincorporating under the provisions of this act, shall deposit with the superintendent of insurance in such securities as are required by law to be deposited by insurance companies, the sum of five thousand dollars within one year after the date of such incorporation or reincorporation, and such corporation shall each year thereafter, upon filing its annual statement, deposit in like securities with the superintendent of insurance, the sum of two thousand dollars on each million of insurance in force for the last calendar year, as shown by its said annual statement, until the sum of one hundred thousand dollars shall have been deposited. The securities deposited with the insurance department pursuant to this section shall be held by the superintendent in trust for the benefit and protection of and as security for the policy holders of such corporation, their legal representatives and beneficiaries. 93 O. L. 343.

(§ 3631-26.) Sec. 3. Life insurance on stipulated premium plan defined; corporations subject to provisions of act; application of existing statutes—

Any corporation, company or association which issues any policy, certificate or other evidence of interest to, or makes any promise or agreement with its members whereby any money or other benefit is to be paid to a member, or upon his decease to his legal representative, or the beneficiary designated by him, which money or benefit is derived from stipulated premiums collected from its members, or members of a class therein, or from interest or accumulations, and wherein the money or other benefits so realized is applied to or accumulated for the use and purposes of such corporation as herein specified; and the expenses of its management and prosecutions of its business, shall be deemed to be engaged in the business of life insurance, upon the stipulated premium plan, and shall be subject only to the provisions of this act, excepting that the provisions of chapter 8, title 3, part 1, and of chapter 10, title 2, part 2, of the Revised

Statutes shall be applicable so far as the same are not inconsistent with the provisions of this act. 93 O. L. 343.

(§ 3631-27.) Sec. 4. Existing corporations, companies, associations or societies may accept provisions of act; how—Existing contract or liability of corporation not to be affected by its reincorporation or acceptance—Pending actions or rights unaffected—

Any domestic corporation, company, association or society, existing or doing business under the provisions of chapter 10, title 2, part 2, of the Revised Statutes, at the time this act takes effect, may, by a vote of a majority of its board of directors or trustees, and upon obtaining the consent of the superintendent of insurance thereto, in writing, accept the provisions of this act, and amend its articles of incorporation to conform with the same, so as to cover and enjoy any and all the provisions or privileges of this act, which might have been included and enjoyed, if it had been originally incorporated hereunder; and it shall file such amendment of its articles of incorporation and the consent required by this section, in the office of the secretary of state, and shall thereafter perpetually enjoy the same and be deemed to have been incorporated under this act. The reincorporating or qualifying of any existing domestic or foreign corporation under the provisions of this act shall in no way annul, modify or change any existing contract, contracts or liabilities of such existing corporation, and any and all such contracts and liabilities shall continue in full force and effect the same as though such corporation had not reincorporated or qualified under this act. Neither shall the reincorporating or qualifying of any such corporations under the provisions of this act, in any way prejudice, impede or impair any pending action or proceeding, or any rights previously accrued. 93 O. L. 343.

(§ 3631-28.) Sec. 5. Minimum premiums—

Every such corporation, company or association doing business under the provisions of this act shall charge at least a net premium calculated upon the combined experience or actuaries' table of mortality, with interest at the rate of four per centum per annum, equal to that of a yearly term insurance at the age

of entry. Such premium shall be increased by a loading of not less than twenty-five per centum, and may be made annually, semi-annually, quarterly or bymonthly in advance. 93 O. L. 343.

(§ 3631-29.) Sec. 6. Reserve fund to be maintained, etc.—

Every such corporation, company or association shall accumulate and at all times maintain a reserve fund not less than the net premium, according to the term of premium payment of each policy, upon all its outstanding policies, which net premium shall equal the amount called for by the combined experience or actuaries' table of mortality at the attained age of the insured, computed as specified in section *five* of this act. If the amount of such reserve fund is at any time reduced to less than such net premium upon all its outstanding policies at the attained age of the insured, or to less than the reserve required by the terms and conditions thereof, such deficiency shall be made up and restored to said fund within three months thereafter. Should such impairment of the reserve fund not be made good within three months, then the superintendent of insurance shall require the officers of such corporation to forthwith notify its members to pay, within thirty days from the mailing of such notice, an extra premium sufficient to meet such deficiency apportioned equitably, and any such extra premium shall not be less than the difference between the actual net premium paid, and the net premium at attained age. If any member fails to pay such extra premium within the time named, the corporation shall scale down the policy of each and every member so failing to pay to such an amount as is necessary to make the reserve fund to his credit equal to said unearned premium on his insurance remaining in force, which amount shall be the maximum for which the corporation shall be liable under said policy. Said thirty days' notice shall clearly state the proportionate amount of the impairment due from the insured and shall contain the further statement that in the event of failure to pay the same within thirty days after the mailing of such notice, said policy will be scaled down as aforesaid. 93 O. L. 343.

(§ 3631-30.) Sec. 7. Limited payment policies—

Any corporation, company or association doing business under

this act may issue limited payment policies; provided such policies hereafter issued distinctly state the portion of each of the premiums to be held by, and charged against such corporation for the purpose of sustaining such policies after expiration of the term of years in which the premiums are to [be] paid, which shall not be less than the legal reserve annually according to the actuaries or combined experience table of mortality with interest at four per cent per annum and which portion at the expiration of such term of years together with the interest accredited thereto, shall not then nor thereafter be less than the single net premium at the attained age, according to the actuaries or combined experience table of mortality, with interest at four per centum per annum; and if any such corporation doing business under this act shall not state in its limited payment policies the portion of each of the premiums to be held by it for the purpose of sustaining the insurance after the term of years during which the premiums are to be paid, or if any such corporation shall issue any form of investment policies, then such limited payment or other form of investment policies hereafter issued shall be valued on the basis of the actuaries or combined experience table of mortality, and interest at four per centum per annum, as provided and contemplated in section *two hundred and seventy-nine* of the Revised Statutes. 93 O. L. 343.

§ (3631-31). Sec. 8. Cash values—

Any corporation, company or association authorized to do business hereunder, may pay fixed cash values, provided the amount of reserve computed and to be set apart for such cash value is plainly stated in the policy, and provided further that such cash value shall not be in excess of the portion of the premium with interest accretions thereon, collected for such purpose. 93 O. L. 343.

§ (3631-32). Sec. 9. Distribution of surplus—

If the cash and invested assets of the corporation, company or association, exceed the reserve fund required by this act, or under the terms and conditions of its policy contracts, and the actual liabilities of said corporation to an amount in excess of ten per centum of such reserve fund, then the amount of such excess may, if the policy contract so provides, be apportioned by

the corporation as a dividend to members, in reduction of premiums, in the purchase of paid up or extended insurance, or may be drawn in cash; or such dividend or dividends may be paid to the beneficiary of a deceased member in addition to the face of the policy. 93 O. L. 343.

§ (3631-33). Sec. 10. What policy shall set forth—Obligation of company to beneficiaries or insured—

Every policy hereafter issued by any corporation, company or association doing business under this act and promising any payment to be made upon a contingency provided for in this act, shall specify the sum of money which it promises to pay upon each contingency insured against, and the number of days after satisfactory proof of the happening of same on which such payment shall be made. Upon the occurrence of such contingency, unless the contract shall have been avoided by fraud or breach of its conditions, the corporation shall be obligated to the beneficiaries or insured for such payment at the time and to the maximum amount due under the policy. If the superintendent of insurance shall be satisfied, upon investigation, that any such corporation has refused or failed, after proper demand, to make such payment for sixty days after final judgment has been obtained upon such claim, he shall notify the corporation to issue no new policies until such indebtedness is fully paid; and no officer or agent of the corporation shall make, sign or issue any policy of insurance while such notice is in force. 93 O. L. 343.

§ (3631-34). Sec. 11. Foreign corporations must procure certificate of authority, etc.—

No corporation, company, association or society organized under the laws of any other state or territory of the United States or the district of Columbia or foreign country, shall transact business under the provisions of this act until it has received from the superintendent of insurance a certificate of authority to do business in this state, a duplicate of which shall be filed in his office. The superintendent shall annually issue to such foreign corporation, company, association or society, renewal certificates of authority to continue business, if it shall have fully complied with the provisions of this act, and if the superintendent shall be of the opinion that any such corporation, company, association or society is not entitled to a renewal of a certificate of authority,

he may in his discretion cite the same to appear, giving reasons therefor, and show cause why the certificate of authority should not be renewed; and unless the certificate of authority shall be renewed within ten days after such hearing, such foreign corporation, company, association or society shall cease to do business in this state. The superintendent may refuse a certificate of authority or renewal of the same to any such foreign corporation, company, association or society, when such refusal will best promote the public interests. When any state, territory or foreign country shall impose any obligations upon any such corporation of this state, or their agents, transacting business in such other state, territory or foreign country, the like obligations are hereby imposed upon similar corporations of such other state, territory or foreign country, and their agents or representatives transacting business in this state; and such corporation, company, association or society of such other state, territory or foreign country, and its agents and representatives, shall pay all licenses, fees or penalties to and make deposits with the superintendent of insurance imposed by the laws of such other state, territory or foreign country upon any corporation of this state doing business therein; and in case of failure to pay the same, the superintendent shall refuse the certificate of authority herein provided for or cancel such certificate if one shall have been previously issued. No foreign corporation, company, association or society shall be authorized to transact any business authorized by this act within this state, unless it furnishes evidence satisfactory to the superintendent of insurance that it has a reserve fund equal in amount to that required by this act, and that the same is held for the benefit of policy holders only, and invested as required by the insurance laws of this state. Neither shall any foreign corporation, company, association or society be authorized to do business in this state unless it collects in advance for the benefit of its policy holders a net premium equal to at least that provided for by the terms of this act. 93 O. L. 343.

§ (3631-35). Sec. 12. Discriminations prohibited, etc.—

No life insurance corporation, company or association subject to the provisions of this act shall make any discriminations in favor of individuals of the same class or of the same expectation of life, either in the amount of premiums charged or in any return of premiums, dividends or other advantages. No agent of

such corporation shall make any contract for insurance or agreement as to such contract other than that which is plainly expressed in the policy issued. No such corporation or agent thereof shall pay or allow, or offer to pay or allow, as an inducement to any person to insure, any rebate or premium, or any especial favor or advantage whatever in dividends to accrue thereon, or any inducement whatever not specified in the policy. If it shall appear to the satisfaction of the superintendent of insurance, after a hearing by him upon due notice, that any corporation is issuing policies or making contracts that are in violation of this section, he shall, upon the written approval of the attorney-general, require such corporation and its officers and agents to refrain, within twenty days, from making any such policy or contract. If any such corporation or officer or agent thereof shall fail to comply with the provisions of this section the superintendent shall institute such proceedings at law as may be necessary to restrain such violation of this section. 93 O. L. 343.

See *Tillinghast v. Craig*, 17 C. C. 531.

§ (3631-36). Sec. 13. Policy holder not personally liable for losses of corporation—

No person shall incur any personal liability for the losses or liabilities of any corporation, company or association organized or doing business under this act by reason of being a policy holder in such corporation. 93 O. L. 343.

§ (3631-37). Sec. 14. Withdrawals of securities upon relinquishment of business—

When any such corporation, company or association shall desire to relinquish its business the superintendent shall, on application of such corporation under the oath of its president or principal officer and secretary or actuary, give notice of such intention at least twice a week for six months in a newspaper of general circulation published at Columbus. After such publication he shall deliver up to said corporation the securities held by him belonging to it upon being satisfied by an exhibition of the books and papers belonging to such corporation, and on examination by himself or by some competent person to be appointed examiner by him, and upon the oath of the president or principal officer and the secretary or actuary of said corporation, that all its debts and liabilities of every kind are paid and extinguished that are

due or may become due upon any contract or agreement made by said corporation or its assignee any portion of such securities on being satisfied in the manner and form hereinbefore required, or upon any other competent proof, that all the debts and liabilities of every kind that are due or may become due are less than the amount or proportion of such securities which he shall still retain. 93 O. L. 343.

§ (3631-38). Sec. 15. Taxes—

Every corporation doing business under the provisions of this act shall be liable for and pay such taxes as other life insurance companies are liable for. 93 O. L. 343.

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§ 3662. Articles of incorporation to be approved by attorney-general—

The articles of incorporation of a company formed for the purpose of insurance other than life insurance must be forwarded to the secretary of state, who shall submit the same to the attorney-general for examination, and if found by him to be in accordance with the provisions of this chapter, and not inconsistent with the constitution and laws of this state and of the United States, shall certify and deliver back the same to the secretary, who may reject any name or title of any company applied for when he deems the same similar to one already appropriated, or likely to mislead the public. 69 v. 140, § 1.

§ 3633. To be recorded by secretary of state and copy deposited with superintendent—

Upon the approval of the articles by the attorney-general and the secretary of state, the secretary shall cause the same to be recorded and copied in the same manner as is provided in the preceding chapter, and a copy thereof to be deposited with the

superintendent of insurance, who shall withhold from the company the certificate of authority, if its name is so similar to the name of any other company as to mislead the public. 69 v. 140, § 2; 75 v. 557, §§ 1, 2.

§ 3634. Capital of joint stock companies—Amount and charter of subscription in mutual fire companies necessary, etc.—

Except as hereinafter provided, no joint stock insurance company shall be organized under this chapter, or permitted to do business in this state, with a less capital than one hundred thousand dollars, which must be fully paid up before the company shall be entitled to transact business, except, that but twenty-five per cent of the capital stock of a live stock company must be paid up before the same shall have the right to do business; nor shall any company on the plan of mutual fire insurance be incorporated until not less than five hundred thousand dollars of insurance, in not less than two hundred separate risks, no one of which shall exceed five thousand dollars, have been subscribed, and the premium thereon, for one year, paid in cash, aggregating not less than ten thousand dollars in cash, each subscriber agreeing, in writing, to assume a liability to be named in the policy, subject to call by the board of directors in a sum not less than three nor more than five annual premiums. And the same liability shall also be agreed to in writing by each subsequent subscriber or applicant for insurance who is not a merchant or manufacturer. And each subscription before incorporation shall be accompanied by a certificate of a justice of the peace of the township or city where such subscriber resides, that the subscriber is, in his opinion, pecuniarily good and responsible to the extent of the contingent liability agreed to be assumed. Mutual fire insurance companies organized under this act may thereafter charge and collect in advance upon their policies a full annual premium in cash, but such policies shall not compel subscribers, insured or assured, to renew any policy nor pay a second or further annual or term premium. Any such company must in its by-laws, and must in its policies, fix by a uniform rule the contingent mutual liability of its members for the payment of losses and expenses; and such contingent liabilities shall not be less than three nor more than five annual cash premiums as written in the policy; but such liability shall cease

with the expiration of the time for which a cash premium has been paid in advance, except for liability incurred during said time; but nothing in this section shall apply to associations for the mutual protection of their members against loss by fire heretofore or hereafter organized as provided in section *thirty-six hundred and eighty-six* of the Revised Statutes. 94 O. L. 301.

Sections 3634, 3648, 3650, 3651, 3652, 3654 and 3663, as printed in the Revised Statutes prior to 1890, and in previous editions of this book, are still in force as to companies which do not reorganize under the amended sections. 85 O. L. 273.

§ 3635. Books of subscription to stock—

The persons named in the articles of incorporation, or a majority of them, shall be commissioners to open books for the subscription of stock in the company, at such times and places as they deem convenient and proper, and shall keep the same open until the full amount specified in the articles is subscribed. 69 v. 140, § 4.

Subscription must be in writing and mutually binding. *Fanning v. Ins. Co.*, 37 Ohio St. 339.

Verbal promise to take shares preliminary to organization is void, unless estoppel can be shown, for want of consideration. *Id.*

§ 3636. Election of directors—

Within one month after the subscription books are filled, and the articles of incorporation filed with the secretary of state, a majority of subscribers to the stock shall hold a meeting for the election of not less than five nor more than twenty-one directors, who must be stockholders or members, and the number thereof may at any time thereafter be increased or diminished between the same limits, at the will of the stockholders representing a majority of the stock or a majority of the members; each member of a mutual company shall be entitled to one vote, and each stockholder in other companies shall be entitled to one vote for each share of stock he holds; and mutual companies may, if they so provide in their by-laws, elect directors for the term of three years, the term of office of one-third of the number elected to expire each year, and those who receive the highest number of votes at the first election to serve for the longest term. 70 v. 180, § 5; 60 v. 75, § 1; S. & S. 217.

§ 3637. How company must invest its capital—

No company organized under this chapter, or incorporated under any law of this state, for the purposes provided in section *thirty-six hundred and thirty-two*, shall invest its capital, or any part thereof, otherwise than in—1. United States bonds; 2. Ohio state bonds; 3. Bonds of a county, township, or municipal corporation in this state, issued in conformity with law; 4. Bonds and mortgages on unincumbered real estate within this state worth fifty per cent more than the sum loaned thereon, exclusive of buildings; 5. The stock of any national bank located in this state, organized under the provisions of an act of congress, entitled "An act to provide a national currency, secured by the pledge of United States stock, and to provide for the circulation and redemption thereof," approved February 25, 1863, and acts amendatory thereof and supplementary thereto; or, 6. First mortgage bonds of railroads within this state, upon which default in the payment of the interest coupons has not been made within three years previous to the purchase thereof. 70 v. 147, § 6.

§ 3638. How it may invest its accumulations—

Funds accumulated in the course of business, or surplus money over and above the capital stock of a company, may be loaned on or invested in the above named securities, or, 1. Bonds and mortgages on unincumbered real estate within this state worth fifty per cent more than the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some company authorized to do business in this state, and the policy is transferred to a company making the investment; 2. Bonds of any state of the United States; 3. Stocks, bonds, or other evidences of indebtedness, of any solvent, dividend paying institution incorporated under the laws of this or any other state, or of the United States, except its own stock; or, 4. Negotiable promissory notes maturing in not more than six months from the date thereof, secured by collateral security through the transfer of any of the classes of securities above described in this or the preceding section, with absolute power of sale within twenty days after default in payment at maturity. 70 v. 147, § 6.

§ 3639. Limitation on the power of investment—

No company shall own more than one-fourth of the capital stock of any national bank, nor invest in nor loan on the stocks and bonds, both included, of any railroad company, to an extent exceeding one-tenth of its own capital, nor in the aggregate shall the investment in and loan on all railroad property exceed one-fourth of its capital; not more than one-half of its capital shall be loaned on mortgage of real estate, as above provided for the investment of capital, and not more than one-tenth of the capital actually existing of any company shall be invested in a single mortgage; the current market value of all such stocks, bonds, or other evidences of indebtedness as above mentioned, in which the accumulations or surplus money over and above the capital stock of any insurance company may be loaned or invested, shall be at all times during the continuance of such loans at least twenty per cent more than the sums loaned thereon; and if any investment or loan be made in a manner not authorized by this chapter, the directors who make or authorize the same shall be personally liable to the stockholders for any loss occasioned thereby; but insurance companies organized under the laws of this state, now doing business, shall not be compelled to change any investment made in accordance with the acts heretofore passed regulating such companies. 70 v. 147, § 6.

§ 3640. Examination by the superintendent—

When a company notifies the superintendent of insurance that the proceedings required by the preceding section have been had, he shall make an examination of the condition of the company, and if he find that the capital required of the company has been paid in and is possessed by it in money, or in such stocks, bonds, and mortgages as are required by this chapter, he shall so certify; or he may cause such examination to be made by some disinterested person specially appointed by him for the purpose, who shall certify his finding to the superintendent under oath; the signers of the articles of incorporation, or the officers of the company, shall also certify, under oath, that the capital exhibited is, bona fide, the property of the company; such certificates shall be filed in the office of the superintendent, who shall thereupon deliver to such company a certified copy thereof, which, on being placed on record in the office of the recorder of the county wherein the company is to be located, in a book provided for that

purpose by him, shall be its authority to commence business and issue policies; and such certified copy of the certificates may be used in evidence for or against the company, with the same effect as the original. 69 v. 140, § 7.

§ 3641. Powers of companies—

A company organized under this chapter may:

1. Insure houses, buildings and all other kinds of property against loss or damage by fire and lightning and tornadoes, in and out of the state, and make all kinds of insurance on goods, merchandise, and other property in the course of transportation, whether on land or water, or on any vessel or boat wherever the same may be.

2. Make insurance on the health of individuals and against personal injury, disablement, or death, resulting from traveling, or general accidents by land and water; make insurance against loss or damage resulting from accident to property, from cause other than fire or lightning; guarantee the fidelity of persons holding places of public or private trust, who may be required to, or do, in their trust capacity, receive, hold control, disburse public or private moneys or property; guarantee the performance of contracts other than insurance policies, guarantee the validity of titles to real property, and execute and guarantee bonds, and undertakings required or permitted in all actions or proceedings, or by law allowed.

3. Make insurance on the lives of horses, cattle, or other live stock against loss by death caused by accident, disease, fire, or lightning, and against loss by theft and damage by accident, provided, that such company shall have a capital of one hundred thousand dollars, with at least twenty-five (25) per cent of the capital stock paid up.

4. Receive on deposit, and insure the safe keeping of books, papers, money, stocks, bonds, and all kinds of personal property; lend money on bottomry or respondentia, and cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property by means of any loan which it may have made on mortgage, bottomry or respondentia, and generally to do and [perform] all other matters and things proper to promote these objects; but no company shall be organized to issue policies of insurance for more than one of the above four mentioned pur-

poses, and no company organized for either one of said purposes shall issue policies of insurance of any other; provided, however, that no company organized under the laws of the state to transact the business of guaranteeing the fidelity of persons holding places of public or private trust, or of executing or guaranteeing bonds or undertakings, as aforesaid, shall commence business until it has deposited with the superintendent of insurance two hundred thousand dollars in securities permitted by sections *thirty-six hundred and thirty-seven* and *thirty-six hundred and thirty-eight* of the Revised Statutes, which shall be held by said superintendent for the benefit and security of all the policy holders of the company, and which shall not be received by the said superintendent at a rate above their par value; nor shall a company, organized under the laws of another state, be licensed to transact any such business in this state unless at least two hundred thousand dollars of its assets are invested in securities permitted by sections *thirty-six hundred and thirty-seven* and *thirty-six hundred and thirty-eight* of the Revised Statutes of this state, and such securities are deposited with the superintendent of insurance of this state, or the superintendent of insurance or other officer of the state in which such company was organized, designated by the laws of such state to receive the same; and if such securities are deposited with the superintendent of insurance or other officer of another state, the superintendent of insurance of this state shall be furnished with the certificate of such state officer under his hand and official seal that he, as such officer, holds in trust on deposit for the benefit of all the policy holders of such company the securities above mentioned, giving the items of such securities, and stating that he is satisfied such securities are worth at least two hundred thousand dollars; and in addition to such certificate such company shall deposit and maintain with the superintendent of insurance of this state thirty thousand dollars for the purpose of paying any judgment obtained against them in this state, in securities as permitted by sections *thirty-six hundred and thirty-seven* and *thirty-six hundred and thirty-eight* of the Revised Statutes of this state, and the securities so deposited with the superintendent of insurance may be exchanged from time to time for other like securities, and so long as the corporation depositing the securities shall continue solvent and comply with the laws of this state it shall be permitted by the superintendent of insurance to collect the interest or dividend on such deposit; provided, also,

that any company which shall execute any bond as surety under the provisions of this act shall be estopped in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability. 93 v. 170.

There can be no recovery on marine policy on vessel sunk while being repaired as necessary result of manner of repairing. Eureka Ins. Co. v. Purcell, 19 C. C. 135.

§ 3641b. Accident and guaranty companies may insure against accidents to employes, etc—

A company heretofore organized or that many hereafter be organized to do business under clause 2 of section *three thousand six hundred and forty-one b*, chapter II, title 2 of the Revised Statutes of Ohio, may make insurance to indemnify employers against loss or damage for personal injury or death, resulting from accidents to employes, or persons other than employes, subject, however, to the restrictions in said section provided; and, provided, that any company incorporated by or organized under the laws of any other state, or of a foreign government that is now doing business in this state by virtue of original section *three thousand six hundred and forty-one b*, shall, on or before the first day of April after the passage of this act, and any company incorporated by or organized under the laws of any other state or government that may desire to do business in this state, shall, before being authorized to transact such business, deposit with the superintendent of insurance, for the benefit and security of the policy holders residing in this state, a sum not less than fifty thousand dollars in bonds of the United States or the State of Ohio, or of any city, county, township or other municipality in the State of Ohio, which shall not be received by the superintendent at a rate above their par value; the securities so deposited may be exchanged from time to time for other like securities, so long as the company so depositing continues solvent and complies with the laws of this state it shall be permitted by the superintendent to collect the interest or dividends on such deposits. Said deposit shall be held by the superintendent of insurance for the benefit, security and protection of the policy holders of the company residing within this state; and it shall be stipulated by the company that such deposit is made, and such sum set aside from the general assets for that purpose, the same to be held until all claims of

policy holders within this state are adjusted. Provided, further, that the provisions of chapter two, title two of the Revised Statutes of Ohio, so far as the same may be applicable and not inconsistent with the provisions of this section shall apply to such companies organized under or incorporated by the laws of another state or government. 91 O. L. 352.

In the third line of this section it refers to sec. 3641*b*, which must mean sec. 3641, paragraph 2, the *b* evidently being a mistake.

Act held constitutional. Fidelity, etc., Co. v. Hahn, Supt., 33 B. 287.

A condition in an accident policy that the notice of the accident be furnished within ten days is complied with if notice be given with due diligence in view of all the circumstances. Delay caused by delirium is excused. Man'fr's Acc. Indem. Co. v. Fletcher, 5 C. C. 633.

§ 3641c. Sufficiency of bonds, recognizances and undertakings executed or guaranteed by companies—

In all cases in which any bond, recognizance or undertaking is now, or hereafter may be required or permitted by law, with one or more sureties, the execution of the same or the guaranteeing thereof, as the case may be, as sole surety, shall be sufficient by a company authorized to guarantee the fidelity of persons holding places of public or private trust, to guarantee the performance of contracts other than insurance policies, and to execute and guarantee bonds and undertakings in actions or proceedings or by law allowed; and when so executed and guaranteed, shall be in all respects, a full and complete compliance with every requirement of law, ordinance, rule or regulation that such bond, undertaking or recognizance shall be executed and guaranteed by one surety or two or more sureties, or that such sureties shall be residents or householders or freeholders; and any judge, court or officer whose duty it is to pass upon the account of any assignee, trustee, receiver, guardian, executor, administrator or other fiduciary, required by law to give bond as such, and whenever such assignee, receiver, trustee, guardian, executor, administrator or other fiduciary, has given bond with a surety company as surety thereon, shall allow, in the settlement of the account of such assignee, receiver, trustee, guardian, executor, administrator or other fiduciary, a reasonable sum paid a company authorized under the laws of this state so to do, for becoming his surety on such bond, not exceeding, however, one-

half of one per cent per annum on the amount of such bond; unless such bond shall be in double the amount of the liability of such fiduciary, when the sum so allowed shall not exceed the sum of one-fourth of one per cent per annum; provided, however, that such company has complied and continued to comply with the laws of this state relative to such companies, and with such requirements as to justification, as may be prescribed by the head of the department, court, judge, or officer required to approve or accept the same, and provided that such bond, recognizance or undertaking be approved by the head of the department, court, judge or officer required to approve or accept the same. This action shall apply to and authorize any surety company above defined to become surety upon the bond required by law of any state officer, (except the superintendent of insurance,) and of any county, township or municipal officer. Such surety company may be accepted by the officer or officers required to approve such bond, in lieu of the sureties now required by law. 92 O. L. 320.

§ 3641d. Deposit required of title guaranty and abstract company; requirements as to stock—

Every company organized for the purpose of guaranteeing the titles to real property shall before commencing business in this state, deposit an amount equal to one-half its capital stock, and in no event less than the sum of two hundred and fifty thousand dollars, with the superintendent of insurance, in the securities permitted by sections *three thousand six hundred and thirty-seven* and *three thousand six hundred and thirty-eight* of the Revised Statutes, and the entire stock of such title guaranty and abstract company shall be paid up, and with the exception of the deposit aforesaid, shall be invested only as the board of directors of said company may prescribe. 92 O. L. 320. .

§ 3642. By-laws and regulations—

The directors shall choose from their own number by ballot, a president, and shall fill all vacancies that may arise in the board, or in the presidency thereof; the board of directors, or a majority of them, when convened at the office of the company, may appoint a secretary and any other officers or agents necessary for transacting the business of the company, and pay such salaries and take such securities as they may judge reasonable; they may ordain and establish by-laws and regulations not inconsistent

with the constitution and laws of this state and of the United States, as shall appear to them necessary for regulating and conducting the business of the company; but no new by-laws or regulation shall take effect until the same has been approved by the state commissioner of insurance and a copy thereof has been filed in the office of said commissioner, and they shall keep full and correct records of their transactions, which shall, at all times, be open to the inspection of members or stockholders. 80 O. L. 41.

§ 3643. Extent of liability under policy of insurance—

Any person, company, or association, hereafter insuring any building or structure against loss or damage by fire or lightning, by a renewal of a policy heretofore issued, or otherwise, shall cause such building or structure to be examined by an agent of the insurer, and a full description thereof to be made, and the insurable value thereof to be fixed by such agent; in the absence of any change increasing the risk without the consent of the insurers, and also of intentional fraud on the part of the insured, in case of total loss, the whole amount mentioned in the policy or renewal upon which the insurers receive a premium shall be paid, and in case of a partial loss the full amount of the partial loss shall be paid; and in case there are two or more policies upon the property, each policy shall contribute to the payment of the whole of the partial loss in proportion to the amount of insurance mentioned in each policy; but in no case shall the insurer be required to pay more than the amount mentioned in its policy. 76 v. 26, § 1.

Where policies in several companies each contained a clause reserving the right in case of loss to rebuild, and notice was served by each company separately of its intention to rebuild jointly with the other companies, and the assured then compromised with all companies except defendant and released them from liability: *Held*, defendant's liability to rebuild was several, and it was not released from its proportionate share of the loss, such share to be ascertained by reference to the aggregate insurance, without regard to the fact that some of the companies had been settled with for a less sum than they were liable for, or that others did not elect to rebuild, or were insolvent or not liable. *Good v. Buckeye Mutual Fire Ins. Co.*, 43 Ohio St. 394. But see *Russell v. Ins. Co.*, 6 N. P. 325 (Sup. Ct., Cin.), that rebuilding clause inconsistent with section 3643.

Where personal property is described in an insurance policy as situate in a particular building, and such place or storage is afterward changed without consent of insurer, and loss accrues, no recovery can be had; and mere

notice that such place would be changed, and reply by the company that its assent must be entered on the policy, is not sufficient. *Phoenix Fire Ins. Co. v. Vorhis*, 1 C. C. 326.

Where condition of policy on dwelling house is that "if the building insured be vacated or left unoccupied" the policy shall be void, the removal of tenant before his lease expires, without the knowledge or consent of the landlord, avoids the policy. *Farmer's Ins. Co. v. Wells*, 42 Ohio St. 519.

Neglect of the agent to make examination and fix the insurable value can not defeat the operation of the statute upon the policy, and the liability of the company in case of loss is measured by the amount mentioned in the policy; conditions in the policy, providing for a different rule or measure, are void, as for instance that the actual value of the property at the time of loss, or cost of restoring the same, should measure the liability; or that no action shall be commenced until award of arbitrators is obtained. In absence of intentional fraud by assured, a condition or situation of the property at the time of insurance, which the examination the agent is required by statute to make should have reasonably discovered, can not defeat a recovery, and statements in the application concerning such condition or value are immaterial, and can not be fraudulent. *Ins. Co. v. Leslie*, 47 Ohio St. 409.

When over valuation will avoid policy, see *Ins. Co. v. McCluckin*, 40 Ohio St. 42.

When over insurance will avoid policy, see *Ins. Co. v. Carson*, 23 B. 224.

For numerous points upon liability for the acts of agent, see *Ins. Co. v. Shoemaker*, 22 B. 315, and *Ins. Co. v. Burget*, 17 C. C. 619; *Ins. Co. v. Hook*, 42 B. 285, and *Ins. Co. v. Baldwin*, 43 B. 381; *Ins. Co. v. Myers*, 43 B. 376.

Where policy provided that change in ownership of goods should avoid the policy—*Held*, that policy was not forfeited if stock was sold, but resold to original owner before loss by fire. *Ins. Co. v. Lewis*, 1 C. C. 79. affirmed, 19 B. 173.

A provision in a policy requiring suit to be brought within twelve months from time of loss means twelve months from time of the fire, and is valid. *Corn City Mut. Ins. Co. v. Schwan, Assignee*, 1 C. C. 192.

Where the use of "gasoline or any of the products of petroleum" for lighting was forbidden by the policy—*Held*, that the policy was not avoided by the use of a gas generated from gasoline in a tank thirty-five feet distant. *Ins. Co. v. Sinclair*, 1 C. C. 496, affirmed, 25 B. 153.

Where a person is induced by threats of a groundless prosecution to accept a less sum than is justly owing to him on a policy of fire insurance, in satisfaction of his claim, and to surrender the same, he may maintain an action on the policy for the balance due, without returning or tendering back the money so received. *Ins. Co. v. Hull*, 51 Ohio St. 270.

Agent may have power to waive proofs of loss notwithstanding conditions in policy. New mortgage in place of old, not increasing the incumbrance, will not avoid policy. *Ohio Farmer's Ins. Co. v. Davison*, 38 B. 163 (Sup. Ct.).

Where policy is issued to a mortgagee, in case of total loss, suit may be

commenced on policy before primary security is enforced. *German Ins. Co. v. Mirick*, 38 B. 172 (Sup. Ct.).

A clause making a policy void for fraud before or after a loss is valid, and no recovery can be had if a fictitious, exaggerated and fraudulent schedule is presented in the proofs of loss, although loss equaled amount of insurance. *Capital Fire Ins. Co. v. Beverly*, 14 C. C. 468.

A stipulation in a policy against taking additional insurance, is not within the provisions of § 3643, for the reason that additional insurance does, as a matter of law, increase the risk, and if taken without the consent of the insurer, invalidates the policy. *The Sun Fire Office of London v. Clark*, 53 Ohio St. 414.

The examination and "change" referred to in the statute relate to physical condition of the property, not to incumbrances. The interest of a husband in a homestead owned by the wife is sufficient to support a recovery by the two jointly on a policy of fire insurance issued to both. *Webster v. Dwelling House Ins. Co.*, 53 Ohio St. 558.

Additional insurance without the consent of the company avoids the policy (it seems where such additional insurance is stipulated against). *Ins. Co. v. Frame*, 51 Ohio St. 604.

As to non-occupancy and increase of risk, see note to *Moody v. Ins. Co.*, 52 Ohio St. 12, under § 3645.

Insurer must ascertain and fix the insurable interest and value thereof. Incumbrance by mortgage after policy issued is no defense unless risk was increased thereby, which is a question of fact. *Henderson v. Ohio Farmer's Ins. Co.*, 2 N. P. 17 (C. P.).

If insured property is destroyed by fire through fault or negligence of another than the assured, the insurer on payment will be subrogated to rights of assured. *Sun Oil Co. v. Ohio Farmer's Ins. Co.*, 15 C. C. 355.

See article on Subrogation in Insurance, 42 B. 285, 313, 334.

As to subrogation by the company on paying a loss caused by another's wrong, see *Fire Ins. Co. v. Stang*, 18 C. C. 464.

A policy upon building and contents may be severable, and breach of condition as to title to land will not avoid insurance on the goods. *Coleman v. Ins. Co.*, 49 Ohio St. 310.

Sale of interest by partner to persisting partners does not avoid policy under prohibition of assignment of policy. *West v. Citizen's Ins. Co.*, 27 Ohio St. 1; nor does transfer of interest by one tenant in common to remaining owners under prohibition of alienation and change in title or interest. *Royal Ins. Co. v. Sockman*, 15 C. C. 105; affirmed, 39 B. 362.

Where the policy covers the loss by lightning but not by loss by explosion unless fire ensues, and the house insured was destroyed by force of an explosion of gunpowder, stored near by, caused by lightning, the company is not liable. *German Fire Ins. Co. v. Roost*, 55 Ohio St. 581.

A policy of fire insurance regularly issued, not expired or canceled, is *prima facie* a valid and effective policy in a suit to recover for a loss. What conditions, and their performance or breach, are required to be pleaded by plaintiff and defendant, and what constitutes occupancy, discussed. *Moody v. Ins. Co.*, 52 Ohio St. 12.

As to occupancy, see also *Ins. Co. v. Baldwin*, 43 B. 38 (Sup. Ct.).

Submitting the value of the property to arbitration is not a waiver of the statutory right to recover full insured value. *Ins. Co. v. Drackett*, 43 B. 413; *Ins. Co. v. Luce*, 11 C. C. 476; affirmed 40 B. 354; nor does adjustment of amount of loss give rise to implied agreement to pay; action must be on policy. *Dwelling House Ins. Co. v. Garvey*, 14 C. C. 657.

A policy of fire insurance is to be governed by §§ 3643 and 3644 and the fact that the premises were mortgaged will not defeat a recovery unless there was intentional fraud by the assured, nor will occupation different from that stated in the policy if the agent knew it. *United Firemen's Ins. Co. v. Kukral*, 7 C. C. 356; affirmed in 31 B. 223.

Where the policy reserves the right to require an appraisal, it must be demanded by the company within a reasonable time in unambiguous terms. *Grand Rapids Fire Ins. Co. v. Finn*, 60 Ohio St. 513. See also 19 C. C. 114.

No appraisalment of actual loss where goods totally destroyed. *Penna. Fire Ins. Co. v. Carnahan*, 19 C. C. 114.

As to making appraisal when only part of goods destroyed. See *Phoenix Ins. Co. v. Romeis*, 15 C. C. 697.

Where the loss is total, if plaintiff is entitled to recover at all, he is entitled to recover the whole amount of the policy. *Sun Mut. Ins. Co. v. Hock*, 8 C. C. 341; affirmed in 56 Ohio St. 735. See also 6 N. P. 134, 249.

For numerous questions of practice in suing upon a policy, see *Queen Ins. Co. v. Leonard*, 9 C. C. 46.

A judgment rendered against the assured, on a cognovit note, does not constitute an incumbrance within the meaning of a condition in a policy that avoids it, if the assured suffers an incumbrance to be placed on the property insured. *Ins. Co. v. Bauersox, Receiver*, 51 Ohio St. 567, affirming 5 C. C. 444; nor does the making of a mortgage avoid a policy as working a prohibited change in the "title, interest or possession of the property insured." *The Sun Fire Office of London v. Clark*, *supra*.

Amount of loss need not be submitted to appraisers in case of total loss of building or structure notwithstanding concurrent insurance loss may be total, although part of structure may not be consumed. *Phoenix Ins. Co. v. Port Clinton Fish Co.*, 14 C. C. 160; affirmed 61 Ohio St. 643; *Penna. Ins. Co. v. Drackett*, 43 B. 413 (Sup. Ct.).

§ 3643a. Insertion of co-insurance clause in policy unlawful—Penalty for violation—Railroad or marine insurance—

It shall be unlawful for any insurance company doing business in this state to insert, or cause to be inserted, any condition in any policy of insurance issued in this state, upon property therein, any clause prescribing that the insured shall carry any given per cent of insurance upon insured property, or in case the assured failed to do so, he shall be held to be a co-insurer to the amount of the difference between the insurance carried and the amount required to be carried by any per cent clause set out in

any policy of insurance; and any insurance company violating this section the superintendent of insurance shall forthwith revoke and recall the license or authority of it to do or transact business within this state, and no renewal of authority shall be granted to it for three years after such revocation; and it shall thereafter be prohibited from transacting any business in this state until again duly licensed and authorized. Provided, that the provisions of this section shall not apply to railroad or marine insurance. 92 O. L. 107.

§ 3643b. Arbitrators and umpires must be residents of the county—How long—

In case where arbitrators and umpires are selected to ascertain a loss under any insurance policy issued on property in this state, said arbitrators and umpires shall be residents of the county in which such loss has occurred, at least one year prior to the said loss. 91 v. 357.

§ 3644. When solicitor held to be agent of insurer—

A person who solicits insurance and procures the application therefor shall be held to be the agent of the party hereafter issuing a policy upon such application or a renewal thereof, anything in the application or policy to the contrary notwithstanding. 76 v. 26, § 2.

Where an insurance agent applies to another insurance agent to procure a certain insurance in his company, both agents are to be considered the agents of the insurance company. *Central Ohio Ins. Co. v. Lake Erie Provision Co.*, 13 C. C. 661.

The company is bound by the mistakes of a soliciting agent who does not fill up an application as directed by the applicant. *Ins. Co. v. Williams*, 39 Ohio St. 584. See note to *Ins. Co. v. Leslie*, under section 3643.

§ 3645. How contracts to be evidenced—

All policies or contracts of insurance made or entered into by the company may be made either with or without the seal of the company; and they shall be subscribed by the president or such other officer as may be designated by the directors for that purpose, and shall be attested by the secretary, and, when so subscribed and attested, they shall be obligatory on the company. 69 v. 140, § 11.

When the charter of an insurance company confers upon it power "generally to do and perform all things relative to the object of the association,"

and provides in a subsequent section that "all policies or contracts of insurance" shall be subscribed by the president, or some other officer designated by the board of directors for that purpose, the latter provision does not disable the company from binding itself by contract for policies and immediate insurance executed in other modes and by other agents, but merely prescribes the manner in which the final contract or policy shall be executed. *Insurance Co. v. Kelly*, 24 Ohio St. 345.

A valid contract of insurance may be made by parol when not forbidden by statute or a provision of the company's charter known to the other party. *Machine Co. v. Ins. Co.*, 50 Ohio St. 549, 555, virtually overruling *Caskerill v. Ins. Co.*, 16 Ohio, 148. See also *Conn. Fire Ins. Co. v. Bennett*, 1 N. P. 71 (Sup'r Ct., Cin.), and 31 Ohio St. 628.

In absence of different negotiations, it will be presumed usual and customary rates and conditions in policy were intended; policy will be regarded as delivered if it has been treated by parties as in force, although it remains in hands of insurer's agent; agent authorized to make contracts and issue policies may waive cash payment of premiums unless there are restrictions upon his authority of which assured has notice; and such waiver may be express or implied. *Id.*, 50 Ohio St. 549.

The execution and delivery of the policy may be subsequent to the oral contract and will relate back if done as of the date of the principal act. *Bennett v. Fire Ins. Co.*, 27 B. 15 (Cin. Sup'r Ct.).

§ 3646. Transfers of stock—

Transfers of stock may be made on the books of the company by any shareholder, or his legal representative, subject to such reasonable restrictions as the directors may, from time to time, make in their by-laws, and subject, also, to any provisions of the laws of this state relating to such transfers. 69 v. 140, § 12.

§ 3647. How stock increased—

When a company, organized under this chapter, requires, in the opinion of the directors thereof, an increased amount of capital, they shall, if authorized by the holders of two-thirds of the stock, file with the secretary of state a certificate setting forth the amount of such desired increase, and thereafter such company shall be entitled to have the increased amount of capital fixed by such certificate; and the examination of securities, composing the capital stock thus increased, shall be made in the same manner as is provided in section *thirty-six hundred and forty* for capital stock originally paid in. 69 v. 140, § 13.

§ 3648. Dividends to be payable from surplus profits only—Reservations therefrom, etc.—

No fire insurance company organized under any law of this state shall make any dividend except from the surplus profits arising from its business; and in estimating such profits there shall be reserved therefrom:

First. A sum equal to fifty per cent of the whole amount of premiums on unexpired risks and policies, which is hereby declared to be unearned premiums.

Second. All sums due the company on bonds and mortgages, bonds, stocks, and book accounts, of which no part of the principal nor the interest thereon has been paid during the preceding year, and on which an action has not been commenced, or which, after judgment obtained thereon, has remained more than two years unsatisfied, and on which interest has not been paid; and

Third. All interest due or accrued, and remaining unpaid, for which the company does not hold securities as hereinbefore provided. Any dividend made contrary to the provisions of this section shall subject the company which makes the same to a forfeiture of its charter, and each stockholder who receives it to a liability to the creditors of the company to the extent of the dividend received, besides the other penalties and punishments prescribed by law; but this section shall not prevent the declaration of scrip dividends by participating or mutual companies, yet no such scrip dividend shall be declared to an amount in excess of or be paid except from profits, after reserving all sums above provided, including the whole amount of premiums on unexpired risks; and the word "year," wherever used in this section shall be construed to mean the calendar year, and the "profits" of a mutual insurance company are that portion of its cash funds not required for payment of losses and expenses nor set apart for any purpose required by law. Any such company may in its by-laws provide for the accumulation of a permanent fund, by reserving a portion of the net profits, to be invested and be a reserve for the security of the insured. When the business of such company is confined to the State of Ohio, such reservation shall not exceed twenty-five per cent of said net profits; and when the sum so accumulated amounts to two per cent of the sum insured by all policies in force, the whole of the net profits thereafter shall be divided among the insured at the expiration of their policies.

But any such company doing business outside the State of Ohio may set aside and thereafter maintain a permanent fund equal to the minimum amount of net cash assets or capital required to do business in any other state or states, according to the insurance laws thereof. The permanent fund so accumulated shall be used for the payment of losses and expenses, whenever the cash funds of the company in excess of an amount equal to its liabilities are exhausted; and whenever the said fund is drawn upon, the reservation of profits as aforesaid shall be renewed or continued until the limits of accumulation as herein provided is reached, but within a reasonable time after the determination of any policy the owner thereof shall be entitled to receive, and shall be paid his pro rata share of all net profits not included in the aforesaid permanent fund, and a scrip dividend for his contribution to said fund. 94 O. L. 121.

§ 3649. What real estate company may hold—

No company, organized under this chapter, shall purchase, hold, or convey real estate, except for the purposes and in the manner herein set forth, to wit:

1. Such as is requisite for its convenient accommodation in the transaction of its business; or,
2. Such as is mortgaged to it in good faith, by way of security for loans previously contracted, or for money due; or,
3. Such as is conveyed to it in satisfaction of debts previously contracted in its legitimate business, or for money due; or,
4. Such as is purchased at sales upon judgment, decree, or mortgages obtained or made for such debts.

No such company shall purchase, hold, or convey real estate in any other case, or for any other purpose; and all such real estate as may be acquired as aforesaid, and which is not necessary for the accommodation of the company in the transaction of its business, shall be sold and disposed of within two years after title thereto is acquired, unless the company procure a certificate from the superintendent of insurance that its interests will suffer materially by a forced sale thereof, when the sale may be postponed for such period as the superintendent shall direct in such certificate. 69 v. 140, § 15.

§ 3650. Liability of members of mutual companies to assessments—Assessments, how made—For what purposes a debt may be created—

Every person who effects insurance in a mutual company, and continues to be insured, and his heirs, executors, administrators, and assigns, shall thereby become members of the company during the period of insurance, and shall be bound to pay for losses and such necessary expenses as accrue in and to the company in proportion to the original amount of his deposit note or contingent liability; and the directors shall, as often as they deem necessary, settle and determine the sum to be paid by the several members thereof, and publish the same in such manner as they may choose, or as the by-laws prescribe, and the sum to be paid by each member shall always be in proportion to the original amount of such liability, and shall be paid to the officers of the company within thirty days next after the publication of such notice; provided, that whenever such company is not possessed of cash funds above its reinsurance reserve sufficient for the payment of incurred losses and expenses, it shall be deemed to have impaired its capital, and when such impairment shall exceed twenty-five per cent of the reinsurance reserve required to be maintained, it shall make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor in proportion to their several liabilities, and to make good the reinsurance reserve; and no such company shall borrow money or create a debt, unless for the purpose of necessary office buildings, to continue beyond the period when such assessment may be collected and applied to the payment thereof; and no member shall be assessed for liabilities incurred prior to his membership. 85 O. L. 273.

See notes to §§ 3634 and 3686.

Subjecting the assured to examination after non-payment of assessment for thirty days does not waive the right to a forfeiture. *Phoenix Ins. Co. v. Hoeffler*, 23 B. 108, reversing 2 C. C. 131. Although no statute authorizes cancellation of policy and note on ground that risk is undesirable, if policy does not reserve such right, if it has been done in good faith, the insured cannot be assessed upon the note by a receiver. *Mansfield v. Franklin Furniture Co.*, 12 C. C. 222, affirmed in 35 B. 180. As to whether members whose notes have been canceled and surrendered can be assessed by a receiver under order of court, see *Wilhelm v. Parker*, Rec., 17 C. C. 234.

Loss by fire and payment by company does not extinguish the contingent liability of the insured. *Mansfield et al. v. Houston*, 35 B. 182.

Member assessed to pay his share of indebtedness of insolvent corporation cannot plead that company was not properly organized or had not complied with the law, nor set up fraud as a defense, after the rights of innocent creditors have intervened. *Mansfield v. Woods et al.*, 29 B. 111 (C. P.); *Ins. Co. v. Horner*, 17 O. 407.

§ 3651. Enforcement of assessments—Partial payment of loss—

If a member neglect or refuse, for the space of thirty days after the publication of such notice, and after demand for payment, to pay the sum assessed upon him [as his?] proportion of any loss as aforesaid, the directors may sue for and recover the whole amount of contingent liability, with cost of suit; but execution shall only issue for assessments and costs as they accrue, and every such execution shall be accompanied by a list of losses for which the assessment is made; and if the whole amount of such liability be insufficient to pay the loss occasioned by any fire or fires, the sufferers insured by the company shall receive, toward making good their respective losses, a proportional share of the whole amount of such liability, according to the sums by them respectively insured; but no member shall ever be required to pay for any loss occasioned by fire, or inland navigation, more than the whole amount of such liability. 85 O. L. 273.

Where policy in mutual company provided it should be void if assessment should remain unpaid thirty days, and also that assured should submit to examination under oath—*Held*, that in case of fire during said thirty days, if the company with knowledge of the facts subjects assured to such examination, the right to a forfeiture is not waived. *Ins. Co. v. Hoeffler*, 23 B. 108, reversing 2 C. C. 131.

§ 3652. How assessments and notice proved—

In actions for the recovery of assessments duly levied by the directors of any mutual fire insurance company of this state, or for money due on the liability of the members of any such company, the official statement of the president or secretary of such company, under seal, and sworn to, shall be received in court as evidence of the facts essential for making the same, and that such assessment, for the non-payment of which any such action is commenced, has been duly levied, and notice thereof given. 85 O. L. 273.

See note to section 3634.

§ 3653. What kind of policies company to issue—

Every mutual company shall embody the word "mutual" in its title, which shall appear upon the first page of every policy and renewal receipt, and every stock company shall express, upon the face of every policy and renewal receipt, in some suitable manner, that such policy or receipt is a stock policy or receipt; but neither class of companies, doing business in this state, shall issue any policy other than that appropriate to its class, except that any mutual company now doing business in this state, having net assets not less than two hundred thousand dollars invested, as provided in section *thirty-six hundred and thirty-seven*, may issue policies either upon the mutual or stock plan, and may continue to do such kind of business so long as its assets continue so invested, and may expose itself to loss on any risk or hazard, either by one or more policies, to an amount not exceeding five per cent thereof. 69 v. 140, § 17.

See *Mansfield v. Cin. Ice Co.*, 28 B. 113, and *Ohio Farmer's Ins. Co. v. Malony*, 33 B. 147.

§ 3654. Annual statements of companies—

The president or vice-president and secretary of such [each] insurance company organized under any law of this or any other state, and doing business in this state, shall annually, on the first day of January, or within thirty days thereafter, prepare, under oath, and deposit in the office of the superintendent of insurance a statement of the condition of such company on the thirty-first day of December then next preceding, exhibiting the following facts and items, and in the following form, namely:

First. The amount or the capital stock of the company, specifying the amount paid and unpaid.

Second. The property or assets held by the company, specifying:

1. The value of the real estate owned by such company, where it is situated, and the value of the buildings thereon.

2. The amount of cash on hand and deposited in banks to the credit of the company, specifying in what banks the same is deposited.

3. The amount of cash in the hands of agents and in course of transmission.

4. The amount of loans secured by bonds and mortgages,

which are first lien on real estate, and on which there is less than one year's interest due.

5. The amount of loans on which interest has not been paid within one year.

6. The amount due the company on which judgments have been obtained and the cash value thereof.

7. The amount of stocks in this state, the United States, of any city of this state, and of any other stocks owned by the company, specifying the amount, number of shares, and the par and market value of each kind of stock.

8. The amount of stock held as collateral security for loans, with the amount loaned on, and the par and market value of each kind of stock.

9. The amount of unpaid assessments on stock, premium notes or contingent liabilities.

10. The amount of interest due and unpaid and the amount of interest accrued but not due.

11. The amount of premium notes or contingent liabilities on which policies are issued.

12. The number of policies in force.

13. The amount insured under all policies in force.

14. The amount of premiums received thereon.

15. The amount and description of all other assets.

Third. The liabilities of the company, specifying :

1. The amount of losses due and unpaid.

2. The amount of claims for losses resisted by the company.

3. The amount of losses incurred during the year, including those claimed and not due, and those reported to the company upon which no action has been taken.

4. The amount of dividends declared and due and remaining unpaid.

5. The amount of dividends, either cash or scrip, declared but not due.

6. The amount of money borrowed and the security given for the payment thereof.

7. The amount required for reinsurance, being in stock companies, a sum equal to fifty per cent. of the whole amount of premiums on unexpired risks and policies; and in mutual companies a sum equal to fifty per cent. of the cash premiums received on unexpired risks and policies.

8. The amount of all other existing claims against the company.

Fourth. The income of the company during the preceding year, specifying :

1. The amount of cash premiums received.
2. The amount of notes or contingent assets received for premiums.
3. The amount of interest money received.
4. The amount of income received from other sources.

Fifth. The expenditure during the preceding year, specifying :

1. The amount of losses paid during the year, stating how much of the same accrued prior and how much subsequent to the date of the preceding statement, and the amount at which losses were estimated in each preceding statement.
2. The amount of dividends paid during the year.
3. The amount of expenses paid during the year, including commissions and fees to agent and officers of the company.
4. The amount paid for taxes.
5. The amount of all payments and expenditures.
6. Amount of scrip dividend declared.

Every mutual fire insurance company created by or organized under any general or special law or act, and doing business in Ohio under any law of this state, upon or without the premium note plan, which shall, by its policy, by-laws or published statements of its financial affairs, claim the benefit of the guarantee fund, or the contingent liability of its policy holders, as provided for in section 3634 of the Revised Statutes, as now in force, shall be held as having organized under the laws of this state as now in force, and be governed by all the provisions thereof as applicable to such companies; and every such mutual fire insurance company that shall neglect or refuse to make and forward to the superintendent of insurance such annual report of its affairs as is required by law, or shall refuse to allow or permit the superintendent of insurance free access to its books and papers, and investigate the financial standing of such company, the charter of every such company organized under the laws of this state as aforesaid, and so neglecting and refusing, shall thereby become forfeited, and the said superintendent of insurance shall proceed without delay to bring the affairs of such company to a close. 91 O. L. 211.

A fire insurance company organized under special charter under old constitution is subject to reasonable regulation by the legislature, and will not be exempt from compliance with sections 3654 and 3655, unless such exemption is clearly granted by its charter. *State v. Eagle Ins. Co.*, 50 Ohio St. 252.

§ 3655. Special report required of certain insurance companies—Penalty—

The statement of any such company, the capital of which is composed in whole or in part of notes, shall, in addition to the foregoing, exhibit the amount of notes which originally formed the capital, and also what proportion of such notes is still held by the company and considered capital; and every company organized under any law of this state which fails to make and deposit such statement, or to reply to any inquiry of the superintendent, with respect to such statement, shall be subject to a penalty of five hundred dollars and an additional five hundred dollars for every month that it continues thereafter to transact any business of insurance, to be recovered by action in the name of the state, and, on collection, paid into the state treasury for the benefit of the state common school fund; and the attorney-general, on the request of the superintendent of insurance, shall institute such action against any company so delinquent, in the court of appropriate jurisdiction in Franklin county, or in the court appropriate jurisdiction of the county in which said company is located or has its principal place of business, as he prefers. 84 O. L. 5.

§ 3656. Foreign companies, associations and partnerships excluded—Certificate of authority—License of agent—Capital stock—Deposit by live stock company—Mutual fire company—

No company, association or partnership, incorporated, organized or associated under the laws of any other state of the United States, or of any foreign government, for any of the purposes mentioned in this chapter, which does a banking or any other kind of business in connection with insurance, shall, directly or indirectly, transact any business of insurance in this state, nor shall any such company, association or partnership do any such business in this state until it procures from the superintendent a certificate of authority so to do; nor shall any person or corporation act as agent in this state for any such company, association or partnership, directly or indirectly, either in procuring applications for insurance, taking risks or in any manner transacting the business of insurance, until it procures from the superintendent a license so to do, stating that the company, association or partnership has complied with all the requirements of this chapter applicable to such company, and depositing a certified

copy of such license in the office of the recorder of the county in which the office or place of business of such agent or agents is established; nor shall any company, association or partnership organized under the laws of any other state, take risks or transact business of insurance in this state, directly or indirectly, unless possessed of the amount of actual capital required by similar companies formed under the provisions of this chapter, nor unless the capital stock of the company is paid up and invested as required by the laws of the state where it was organized, and if a live stock insurance company has deposited in such state or in this state, for the benefit of its policy holders, securities approved by the insurance department of such state in an amount equal to one-fourth of its entire capital stock; but if the company is a mutual fire insurance company, it shall have actual cash assets of same amount and description as is required of mutual fire insurance companies of this state, after organization, invested as required by the law of the state where such company was organized, and such companies must have either premium notes or contingent liability of the same amount as is required of similar fire insurance companies of this state, which contingent liability may be either in writing or be expressed in the policies issued by such company. 91 O. L. 138.

A mutual company duly organized under the laws of another state may do business in this state if it has the amount and kind of assets required by the laws of this state of similar companies, viz., at least \$50,000 in premium notes, on which \$10,000 in money has been paid. *State ex rel. Miss. Valley Mut. Ins. Co. v. Moore, Supt.*, 42 Ohio St. 103.

But the superintendent of insurance cannot be compelled by mandamus to admit such company into the state, if he has, in good faith, rejected its application for admission as not otherwise qualified, although on the trial in mandamus, the superintendent may be unable to show the existence of any fact tending to establish the disqualification; the exercise of his discretion in such cases, in the absence of fraud, being conclusive. Still the court say the foreign company cannot be excluded by mere arbitrary ruling. *Id.*

A loan by a foreign insurance company on a note and mortgage is not "banking" under this section. *Bank v. Ins. Co.*, 42 Ohio St. 1.

Issuing license by superintendent is a ministerial and not a judicial act; and is therefore not a bar to a proceeding in *quo warranto*. *State v. Ins. Co.*, 49 Ohio St. 440.

Foreign insurance companies and associations, whether incorporated or not, before commencing business in this state, are required to obtain a certificate of authority to do so, from the superintendent of insurance; the privilege it confers is a franchise, and any company or association, carrying

on its business here without having obtained such authority, is unlawfully exercising a franchise. *State v. Ackerman*, 51 Ohio St. 163.

§ 3657. The waiver companies must file—

Any such company desiring to transact any business by an agent in this state shall file with the superintendent a written instrument, duly signed and sealed, authorizing any agent of the company in this state to acknowledge service of process in this state for and in behalf of the company, consenting that service of process, mesne or final, upon any such agent, shall be taken and held to be as valid as if served upon the company according to the laws of this or any other state or country, waiving all claim or right of error by reason of such acknowledgment of service, and consenting that suit may be brought against it in the county where the property insured was situate, or where the same was insured, and that service of process made therein by the sheriff of such county, by sending a copy thereof by mail, addressed to the company at the place of its principal office located in the state where it was organized, or, if it is a foreign company, to such company at the place of its principal office in the United States, at least thirty days prior to taking judgment in such suit, shall be as valid as if personally made upon the company according to the laws of this state, or any other state or government, and that if suit be brought against it after it ceases to do business in this state as aforesaid, and there be no agent of the company in the county in which suit is brought upon whom service of process can be had, service upon it may be had by the sheriff sending a copy thereof, mailed as aforesaid, and within the time aforesaid; but the sheriff's return shall show the time and manner of such service. 75 v. 572, § 20.

§ 3658. Must also file statement—

Every such company, association, or partnership shall also file with the superintendent a certified copy of its charter, or deed of settlement, together with a statement, under the oath of its president or vice-president, or other chief officer, and the secretary of the company, stating the name of the company, the place where it is located, and the amount of its capital, with a detailed statement of the facts and items required from the companies organized under the laws of this state by sections *thirty-six hundred and fifty-three* and *thirty-six hundred and fifty-four*; and

they shall also file with the superintendent a copy of their last annual report, if any was made, under any law of the state by which it was incorporated. 76 v. 572, § 20.

§ 5659. Revocation of license of foreign insurance company—

If any such company, association, or partnership doing business within this state makes an application for a change of venue, or to remove any suit, or action wherein such company has been sued by a citizen of this state, now pending; or hereafter commenced in any court of this state, to the United States district or circuit court, or to any federal court, or shall enter into any compact or combination with other insurance companies, or shall require their agents to enter into any compact or combination with other insurance agents or companies, for the purpose of governing or controlling the rates charged for fire insurance on any property within this state, or for the purpose of governing or controlling the rates per centum or amount of commission or compensation to be allowed agents for procuring contracts for fire insurance on any property within this state (provided that nothing herein shall prohibit one or more of such companies from employing a common agent or agents to supervise and advise of defective structures, suggest improvements to lessen the fire hazard, and to advise as to the relative value of risks), the superintendent of insurance shall forthwith revoke and recall the license or authority to it to do or transact business within this state, and no renewal of authority shall be granted to it for three years after such revocation; and it shall thereafter be prohibited from transacting any business in this state until again duly licensed and authorized. 94 O. L. 165.

§ 3660. Deposit with superintendent of insurance—Capital of fire company—

A company incorporated by or organized under the laws of a foreign government shall deposit with the superintendent of insurance, for the benefit and security of the policy holders residing in this state, a sum not less than one hundred thousand dollars in stock or bonds of the United States, or the State of Ohio or any municipality or county thereof, which shall not be received by the superintendent at a rate above their par value; the stocks and securities so deposited may be exchanged from time to time

for other like securities; so long as the company so depositing continues solvent and complies with the laws of this state, it shall be permitted by the superintendent to collect the interest or dividends on such deposits; and for the purpose of this chapter the capital of any foreign company doing fire insurance business in this state shall be deemed to be the aggregate value of its deposits with the insurance or other departments of this state and of the other states of the United States, for the benefit of policy holders in this state or in the United States, and its assets and investments in the United States certified according to the provisions of this chapter; but such assets and investments must be held within the United States, and invested in and held by trustees, who must be citizens of the United States, appointed by the board of directors of the company and approved by the insurance commissioner of the state where invested, for the benefit of the policy holders and creditors in the United States; and the trustees so chosen may take hold and convey real and personal property for the purpose of the trust, subject to the same restrictions as companies of this state. 91 O. L. 39.

§ 3661. All foreign companies must make annual statements—

Every company, other than a life company, organized by act of congress, or under the laws of any other state or government, shall, annually, at the time, and in the form and manner, required of similar companies organized under the laws of this state, file a statement of its condition and affairs in the office of the superintendent of insurance; any company organized under or incorporated by any foreign government shall also furnish a supplementary statement for the year ending on the preceding thirty-first day of December, verified by the oath of the manager of such company residing in the United States, which shall comprise a report of its business and affairs in the United States, as required from companies organized in this state, together with any other information that may be required by the superintendent of insurance; and if such annual statement be satisfactory evidence to the superintendent of insurance of the solvency and ability of such company to meet all of its engagements at maturity, and that the deposit is maintained as hereinbefore provided, he shall issue renewal certificates of authority to the agents of the company, certified copies of which shall be filed in the recorder's

office of each county wherein an agency is located, during the month of January in each year, or within sixty days thereafter, which certificates shall be the authority of such agents to issue new policies in this state for the ensuing year. 69 v. 140, § 22.

§ 3661a. Fire insurance company to include in advertisement only assets admitted by superintendent of insurance—

No insurance company organized under the laws of this state, or admitted to do business in this state, shall, in any public advertisement, card, or circular, include in any statements of assets, any item of value, of a class or character not admitted by the superintendent of insurance of this state in the annual reports of said companies. And every such advertisement, card, or circular, containing a statement of assets shall in all cases contain also a full statement of all the liabilities of said company, including the reinsurance reserve, which in no case shall be less than fifty per cent on the gross premiums received on all unexpired risks. 77 O. L. 185.

§ 3661b. Penalty—

Any violation of this act, after the second notice from the superintendent of insurance of this state, shall render such company liable to a fine of one thousand dollars (\$1,000), and each subsequent violation to a similar fine; to be recovered for the benefit of the common school fund of the county, in an action to be instituted by the prosecuting attorney, in the name of the State of Ohio, against said company. 77 O. L. 185.

§ 3662. Companies must apply dividends to stock notes—

Every company heretofore organized under any law of this state, for any of the purposes mentioned in this chapter, which has not called in the whole amount of its subscribed capital stock, whether the unpaid balance of such capital is secured by indorsed notes or otherwise, shall retain from each and every dividend declared to its stockholders, their heirs or assigns, fifty per cent of such dividend, and apply the amount so withheld as a credit upon the balance remaining unpaid on the shares of such stockholders, until such balance shall be fully paid; and the dividends, from time to time so credited, with the capital previously paid in, shall be invested by the company in the manner

required by section *thirty-six hundred and thirty-seven*; but if the dividends so credited did not, by the first of January, 1878, equal such balance in full, such company shall hereafter retain the whole amount of any and every dividend declared to its stockholders, their heirs or assigns, and shall credit and invest the same as aforesaid, until the whole subscribed capital, not less in any case than one hundred thousand dollars, shall be paid up and invested; and any company which violates any of the provisions of this section shall thereby forfeit its charter. 70 v. 147, § 23.

§ 3663. Lien of mutual companies for premium notes—

All buildings insured by any mutual company shall be pledged to such company, together with the right and title of the assured in the lands upon which they are situate, to the amount of the premium note or contingent liability, and the company shall have a lien thereon to the amount of such note or liability; but the lien of the company shall not take effect until the company files with the recorder of the county in which the property insured is situate a certificate stating the date, number and amount of premium note, or contingent liability, and such a description of the property insured as will enable any person readily to identify the same; the recorder shall record and index the certificate in his book of liens, for which he shall receive the sum of fifty cents; and all liens heretofore acquired by any such company shall continue in force under this chapter. 85 O. L. 273.

See note to section 3634.

§ 3664. Insured may require fire policy to be canceled—

Any fire insurance company doing business under the laws of this state which hereafter issues policies of insurance covering any property located in the state, and on such policies receives from the persons insured either cash payments of premium, or notes subject to assessment for payment of losses, or notes for the installments of premium, shall be required to insert in every policy so issued an obligation to cancel the policy at any time, upon the written request of the person insured, on conditions as provided in the following five sections. 75 v. 88, § 1.

Sections 3664 to 3667 apply only when policy is canceled on written request of assured, not to cancellation by action of the company where a

policy provides that the insurance may be terminated by the company on giving notice, the policy is canceled and insurance terminated by giving the notice, and the return of unearned premium is not a condition precedent to such cancellation. *Ins. Co. v. Brecheisen*, 50 Ohio St. 542.

§ 3665. Rates for cancellation of cash policies—

When a policy issued on the cash plan is canceled, in accordance with the provisions of the preceding section, the companies so issuing may retain customary short rates, as now established and charged by companies doing a cash business, for the time the policy has been in force, and return to the insured the unearned premium on the policy for unexpired time. 75 v. 88, § 2.

§ 3666. Rates for policies of mutual companies—

When policies issued on the mutual plan are canceled, as provided in section *thirty-six hundred and sixty-four*, the companies so issuing must surrender to the insured the note or notes received from the insured for premium or payment of losses; such policies shall first be sent to the secretary or agent of the company; and within sixty days after the receipt thereof for cancellation the premium note shall be returned; but the assured must first pay his proportion of all losses which have actually occurred up to the date when the policy was received for cancellation, and the company shall not be liable for any loss under any such policy after it is returned for cancellation. 75 v. 88, § 3.

§ 3667. Rates when premium is paid in installments—

When policies issued on the installment plan are canceled, in accordance with the provisions of section *thirty-six hundred and sixty-four*, the companies so issuing may collect and receive of the insured customary short rates for the time the policy has been in force, to be computed on the full term of insurance mentioned in the policies as charged by such companies, and on receipt of such short rates must return all installment notes then unpaid, and refund to the insured any premium collected in excess of such short rates. 75 v. 88, § 4.

§ 3668. Premium notes not negotiable—

When companies doing business under the laws of this state receive notes in consideration of premiums on their policies, they shall be required to insert on the face of each note the following

words, to wit: "It is hereby understood and agreed that this note is not transferable." 75 v. 88, § 5.

§ 3669. Superintendent to enforce certain provisions—

When it comes to the knowledge of the superintendent of insurance, or any officer having charge of the insurance department of this state, that any provision of the five preceding sections has been violated, he shall at once proceed to make a thorough investigation, and, upon receiving sufficient proof of such violation, shall revoke the certificate of authority of the company guilty of such violation. 75 v. 88, § 6.

§ 3670. Accident companies authorized—

Companies may be organized for the special purpose of insuring persons against accidental personal injury or loss of life sustained while traveling by railroad, steamboat, or other mode of conveyance, and making all and every insurance connected with the accidental loss of life, or personal injury sustained by accident, of every description whatever, and against expenses and loss of time occasioned by sickness or other disability, and on such terms and conditions, and for such periods of time, and confined to such countries and localities, and to such persons, as shall from time to time be provided for in the by-laws of the company; and, when any company so organized desires to do business in any other state, by the laws of which, to qualify it therefor, it is required to make a deposit of securities assigned in trust for the benefit of its policy holders with an officer of this state, it shall be, and hereby is made the duty of the state treasurer to receive such deposit, and issue therefor to such company his receipt, giving a pertinent description of such securities and a certificate of the market value of the same; and he shall also issue a like certificate to the superintendent of insurance, who shall place the same on file in his office. Such company shall have the right to exchange said securities for other like securities, in whole or in part, as far as its business may require, and to wholly withdraw the same should it discontinue business in such other state; but all such changes or withdrawals of securities shall be at once duly certified by the treasurer to the superintendent of insurance. 82 O. L. 210.

Where the policy provides that legal proceedings to recover shall be begun within one year from the time of the accident, suit cannot be brought

later upon the ground that the beneficiary was ignorant that death was caused by accident. *Coldham v. Pac. Mut. Life Ins. Co.*, 2 N. P. 358 (C. P.); s. c. 38 B. 270.

Where a policy exempted the company from liability when death was caused by "hernia," it was held liable where the accident caused hernia, from which the assured died. *Miner v. Travelers' Ins. Co.*, 2 N. P. 103 (C. P.)

"Immediate notice" of death by accident—what is compliance with. *American Accident Co. v. Card*, 13 C. C. 154; affirmed, 41 B. 178; *Crane v. Ins. Co.*, 4 N. P. 309; Sup. Ct., Cin.

What are accidental injuries. See *Interstate Casualty Co. v. Bird*, Admx., 18 C. C. 488.

§ 3671. How companies may consolidate—

When any joint stock fire and marine insurance company of this state, heretofore organized, or that may hereafter be organized, determines by a vote of the holders of two-thirds of its stock to consolidate and make joint stock with any other like company or companies engaged in or incorporated for like business, and each of such companies agrees, by the vote aforesaid, to such consolidation, such companies may, by a vote of the holders of a majority of the stock so consolidated, choose and determine under which corporate organization or articles of association of the consolidating companies, and under what name, their future business shall be conducted; upon filing with the superintendent of insurance a certificate of such consolidation, the companies shall from thenceforth become and be consolidated under the corporate organization or articles of association and corporate name thus chosen; and thereupon all franchises, rights, equities, property, and estate, of whatever name or nature, belonging to or vested in either of the consolidating companies, shall immediately, upon and by the act of such consolidation, become the property and estate of and be vested in such consolidated company, and the corporate existence of the consolidating companies shall cease, and be merged in the consolidation from thenceforth; and such consolidated company shall have the exclusive right and power to demand, sue for, collect, convey, and dispose of the rights, equities, property, and estate aforesaid, or any part thereof, under its own name chosen as aforesaid, and all debts, liabilities and obligations of the consolidating companies shall be assumed and paid by the consolidated company. 70 v. 19, § 1.

§ 3672. Distribution of the stock of consolidated company—

Upon such consolidation of companies the just and true value of each outstanding share of the capital stock of each of the consolidating companies shall, by their respective directors, be ascertained, through a suitable valuation of all the assets and liabilities thereof at the time of the consolidation, and new shares of the consolidated company shall be apportioned to each stockholder, equal to the sum so ascertained to be the just and true value of his shares in each or either of the consolidating companies, and the shares thus apportioned shall be substituted for his original shares, and all certificates of shares in the consolidating companies shall be surrendered when the new certificates of the shares so apportioned are issued; but any stockholder in either of the companies so consolidating who refuses to agree to such consolidation shall be entitled to receive for the stock by him owned the just market value of the same at the time of such consolidation, to be paid to him previous to such consolidation. 70 v. 19, § 2.

§ 3673. Election of directors—

Immediately upon the consolidation of such companies, the directors of the several companies so consolidating shall proceed to elect, from their members, the directors for the consolidated company, who shall serve until their successors are elected and qualified. 70 v. 19, § 3.

§ 3674. Capital stock limited—

The capital stock of such consolidated company may be equal to, but shall not, by virtue of such consolidation, exceed the aggregate authorized capital of the consolidating companies. 70 v. 19, § 4.

§ 3675. Certificate of consolidation filed with secretary of state—

Within thirty days after such consolidation a certificate, setting forth the fact of the consolidation, and the name and organization adopted thereby, shall be filed in the office of the secretary of state. 70 v. 19, § 5.

§§ 3676, 3677, 3678, 3679, 3680, 3681, 3682—

Repealed. 77 O. L. 317.

§ 3683. Examination of mutual fire companies—

The court of common pleas in each county in which the office of any mutual fire insurance company is situate shall, on the application of any three or more persons interested, appoint one or more suitable persons, resident in such county, to make a thorough and careful examination into the affairs and condition of such company; the persons so appointed shall have power to require the production of all books and papers belonging to such company, or pertaining to its business, and to examine under oath all officers, servants, or agents of the company, or any other person, touching its affairs and condition, which oath may be administered by any person appointed to make the examination, and they shall report thereon to the court, at its next regular term, in which they shall set forth in full the condition of the company, and transmit a copy of such report to the superintendent of insurance forthwith; and such examiners shall each receive two dollars per day for the time actually employed in making the examination and report, to be paid out of the treasury of the company examined; but such examination shall not be had oftener than once in six months. 56 v. 37, § 1; S. & C. 353.

§ 3684. Persons refusing to appear and testify are in contempt—

If any such officer, servant, agent, or other person, fail or refuse to appear before such examiners, or refuse to testify, or to produce before them any book or paper in his possession, and required to be produced, such failure or refusal shall be deemed a contempt, and shall forthwith be reported to such court, which shall punish the person in contempt in the same manner and to the same extent as though such contempt had been committed against the court. 56 v. 37, § 2; S. & C. 353.

§ 3685. Certain bonds may be approved by probate judge—

Any insurance company which, by the terms of its charter, is required to have its official bonds approved by a judge of the court

of common pleas, may, at its option, have the same approved by the probate judge of the county in which the office of the company is located. 54 v. 17, § 1; S. & C. 363.

§ 3686. Mutual fire associations, etc.—

Any number of persons of lawful age, residents of this state, or residents of an adjoining state and owning insurable property in this state, not less than ten in number, may associate themselves together for the purpose of insuring each other against loss by fire and lightning, cyclones, tornadoes or wind storms on property in this state; and may make, assess and collect upon and from each other such sums of money, from time to time, as may be necessary to pay losses which occur by fire and lightning, cyclones, tornadoes or wind storms to any members of such association, and the assessment and collection of such sums of money shall be regulated by the constitution and by-laws of the association. An association formed for the purpose of insuring against loss by fire and lightning, cyclones, tornadoes or wind storms may insure farm buildings, detached dwellings school houses, churches, township buildings, grange buildings, farm implements, farm products, household goods and furniture in such buildings, and other property not classed as extra hazardous. 93 O. L. 335.

See note to *Manfrs. Fire Assn. v. Lynchburg Drug Mills*, under sec. 3261. Sec. 3650 has no application to associations under this section; and a member holding a policy, though not signing the constitution, is estopped to deny liability for assessments by directors or courts. *Richards, Rec., v. Swaim, etc., Co.*, 7 N. P. 68 (C. P.).

§ 3687. Certificate of organization—

Such persons shall make and subscribe a certificate setting forth therein:

First. The name by which the association shall be known.

Second. The place which shall be regarded as its center or business office.

Third. The object of the association, which shall only be to enable its members to insure each other against loss by fire and lightning, cyclones, tornadoes, or wind storms, and other casualties, and to enforce any contract which may be by them entered into, by which those entering therein shall agree to be assessed

specifically for incidental purposes and for the payment of losses which shall occur to its members. 86 O. L. 377.

§ 3688. When certificate to be filed—

The certificate shall be filed in the office of the secretary of state, and a copy thereof, duly certified by the secretary of state, shall be evidence of the existence and due incorporation of the association for the purposes therein named. 74 v. 66, § 3.

§ 3689. Election of officers—Powers—

When such certificate is so filed, and a copy thereof, so certified, forwarded to the association, the persons named therein shall elect their directors, and a president, secretary, and treasurer, and such other officers as may be necessary for the complete performance of all the business and objects of the association herein provided, to serve for one year; and such officers shall thereafter be chosen in such manner, and at such time as shall be fixed upon in the constitution; but directors shall not be chosen for a longer period than three years; and such association so organized shall be known and held to be a body corporate for all the purposes aforesaid; and may sue and be sued, and plead and be impleaded, in all courts of law and equity, but in no instance shall the power to insure against losses by fire or tornadoes be exercised to other than members of the association. 83 O. L. 106.

§ 3690. Certain insurance companies must adopt constitution and by-laws—Official statement to be made to superintendent of insurance—

Every such association shall adopt such constitution and by-laws, not inconsistent with the constitution and laws of this state or of the United States, as will, in the judgment of its members, best subserve the interests and purposes of the association; and all persons who sign such constitution shall be considered and held to be members of the association, and shall be held in law to comply with all the provisions and requirements of the association; and the president or vice-president and secretary of every such association shall annually, on the first day of January or within thirty days thereafter, prepare under oath and deposit in the office of the superintendent of insurance a statement of the condition of such association on the thirty-first day of December then next preceding, exhibiting such facts as are enumerated in section

thirty-six hundred and fifty-four, and applicable to such associations, and such other information necessary to reveal the financial condition of such associations as the superintendent may require, in printed form to be by him supplied to such association for that purpose, and every such association which fails to make and deposit such statement, or to reply to any inquiry of the superintendent, shall be subject to a penalty of five hundred dollars, and an additional five hundred dollars for every month that it continues thereafter to transact any business of insurance. 80 O. L. 197.

§§ 3686 to 3690. Members cannot be assessed for losses occurring before membership begins or after it ceases, nor can the liability of a member be limited to a certain sum paid in advance. *The State v. Monitor Fire Association*, 42 Ohio St. 555.

Such companies cannot be organized for profit, nor can their funds be applied to the purchase of the assets of another like corporation. *Ib.* 579.

Such association cannot receive non-resident into membership, nor do insurance business on the "joint stock" plan, nor on the "contingent liability" plan, as defined in sec. 3634. *State v. Manfr's Mut. Fire Assn.*, 50 O. S. 145.

(§ 3690-1.) Sec. 1. Mutual fire insurance associations authorized to organize as companies—

Any mutual fire insurance association organized under section *thirty-six hundred and eighty-six*, now doing business and now having the number of policies and amount of insurance in force and the amount of assets required in order to organize a mutual fire insurance company may organize as such mutual fire insurance company in the following manner: The board of trustees of such association shall give notice, by publication in a newspaper of general circulation, and published in the county wherein its principal office is situated, at least three consecutive weeks before such application be made, of their intention to so organize; and shall thereupon make application to the superintendent of insurance respecting their desire to assume the requirements of all the laws governing mutual fire insurance companies organized and doing business under the laws of Ohio, setting forth the amount of insurance carried, the number of policies in force, the amount of its assets and liabilities; and if said superintendent of insurance shall be satisfied, by an examination, or otherwise, of the condition of such association, that at the date of the passage of this act it possessed the re-

quired amount of assets, and the number and amount of policies in force to organize a mutual fire insurance company, he shall so certify, upon a certificate of incorporation, containing the requisite statements required to incorporate a mutual fire insurance company, which certificate, after having been duly executed, shall be delivered to the secretary of state, who shall record the same, and issue his certificate of incorporation as in other cases for change of name, capital or location of an incorporated company, charging only such fees therefor as authorized by law in other cases for change in capital or location of company. 87 O. L. 88.

(§ 3690-2.) Sec. 2. Rights of policy holders, etc.—

Thereafter the business of such fire insurance association shall be conducted as and be subject to all laws governing mutual fire insurance companies; and all members of said association shall be members of said mutual fire insurance company, to the time of the expiration of [or] cancellation of their policies, and entitled to all the benefits as such, precisely as if original members of such company, without exchanging policies or contracts, and entitled to all the benefits as members of said company precisely as if original members of said company. 87 O. L. 88.

(§ 3690-3.) Sec. 3. Policies, by-laws, etc.—

After such change in the plan of insurance by such association, and the organization of such mutual fire insurance company, all policies thereafter issued shall be in the name and by the authority of such mutual fire insurance company, and the policies theretofore in force, and the by-laws, rules and regulations of such association, if not in conflict with the laws governing mutual fire insurance companies, shall be and remain in full force and effect until the same shall have terminated or been lawfully changed by said company or its board of directors, as authorized by law. 87 O. L. 88.

§ 3691. Cellar and foundation not considered part of structure in settling loss—

The cellar and foundation walls shall not be included or considered a part of the building or structure in settling losses, anything in the application or policy to the contrary notwithstanding.

(§ 3691-1.) Sec. 1. Mutual protective association—

Any number of persons of lawful age, residents of this state, not less than five, may associate themselves together for the purpose of becoming a body corporate, and may insure themselves, and any person becoming a member of such incorporation, in accordance with the rules and regulations of such corporation, against loss, from death, of domestic animals, and may assess and collect, upon and from each other, such sums of money, from time to time, as may be necessary to pay losses which occur, from death of domestic animals, to any member of such incorporation; and incidental expenses, and the assessments and collections of such sums of money shall be regulated by the constitution and by-laws of the corporation. 86 O. L. 377.

What unauthorized acts, diversion of funds, etc., will not justify appointment of receiver for a mutual protection association. *Baker v. Fraternal Mystic Circle*, 32 B. 84 (C. P.).

(§ 3692-2.) Certificate of organization—

Such persons shall make and subscribe a certificate, setting forth therein—

- 1st. The name by which the corporation shall be known.
- 2d. The place which shall be chosen as its principal office.
- 3d. The object of the corporation, which shall only be to enable its members to insure each other against loss from death of domestic animals, and to enforce any contract which may be by them entered into, whereby they specifically agree to be assessed for the payment of losses and incidental expenses.
- 4th. Shall acknowledge the signing of such certificate before a notary public, or other officer authorized to take the acknowledgments of deeds and mortgages. 86 O. L. 377.

(§ 3691-3.) Sec. 3. Certificate to be filed with secretary of state—

The certificate shall be filed in the office of the secretary of state, and a copy thereof, duly certified by the secretary of state, shall be evidence of the existence and due incorporation of such company for the purposes therein named. 86 O. L. 377.

(§ 3691-4.) Sec. 4. Election of officers—

When such certificate is so filed, and a copy thereof, so certified, forwarded to the company, the persons named therein shall

elect their directors, and a president, secretary and treasurer, and such other officers as may be necessary for the complete performance of all the business and objects of the company herein provided for, to serve for one year, or until their successors are duly elected and qualified. Such officers shall thereafter be elected annually, by the members of the association, at such time as shall be fixed upon in the constitution; and such company so organized shall be known and held to be a body corporate, for the purpose aforesaid, and may sue and be sued, and plead and be impleaded, in all courts of law and equity; but in no instance shall the power to insure against loss by death or domestic animals be exercised to others than the members of the company; and no such company shall receive applications nor issue policies to persons not bona fide residents of Ohio. 86 O. L. 377.

(§ 3691-5). Sec. 5. Constitution and by-laws—Annual statement to commissioner of insurance—

Every such company shall adopt such constitution and by-laws, not inconsistent with the constitution and laws of this state and the United States, as will, in the judgment of its members, best subserve the interest and purposes of the company; and all persons who obtain insurance in such company shall thereby become members thereof, with power to vote at all regular meetings of such members, upon all subjects, and shall be held, in law, to comply with all the provisions and requirements of the company; and the president, or vice-president, and secretary of every such company, shall annually, on the first day of January, or within thirty days thereafter, prepare, under oath, and deposit in the office of superintendent of insurance, a statement of the condition of such company on the thirty-first day of December then next preceding, exhibiting such facts as are enumerated in section *thirty-six hundred and fifty-four* of the Revised Statutes of Ohio, and applicable to such companies, and such other information as is necessary to reveal the financial condition and general management of such company, as the superintendent of insurance may require in printed form, to be, by him, supplied to such companies for that purpose; and every such company failing to make and deposit such statement, or to reply to any inquiry of the superintendent, shall be subject to a penalty of five hundred dollars, and an additional five hundred dollars for every month that it continues thereafter to transact any business of insurance,

and shall forfeit its right to do the business contemplated by this act, which forfeiture the superintendent shall enforce by proceeding in quo warranto. 86 O. L. 377.

(§ 3691-6). Sec. 6. Examinations by commissioner of insurance—

The superintendent of insurance may, whenever he may deem it advisable, cause an examination of the affairs of such company or corporation to be made by one or more disinterested persons, at the expense of the company, such expense not to exceed five dollars per day for each person so employed; and if, upon such examination, it shall appear that such company or corporation is exercising powers or franchises contrary to law, the superintendent of insurance shall institute proceedings in quo warranto against the same, and if it be found, in such proceedings, that such company or corporation has exercised powers or franchises contrary to law, a forfeiture of its right to do business shall be declared. 86 O. L. 377.

(§ 3691-7). Sec. 7. Amount of applications for insurance required before commencing business—

No company organized under this act shall issue any certificate or policy of insurance until bona fide applications for insurance to the amount of fifty thousand dollars shall have been filed with the secretary of such company, and a statement of such fact sworn to by such secretary and president of such company, filed with and approved by the superintendent of insurance. Nor shall the treasurer of such company receive any money, as such treasurer, until he shall have filed with the superintendent of insurance, payable to the State of Ohio, for the benefit of the members of such company, his bond, in the sum of ten thousand dollars, with security, to be approved by the superintendent. Such bond shall be conditional for the faithful application of all money coming into his hands as such treasurer, 86 O. L. 377.

(3691-8.) Sec. 8. When company may commence business—

When the statement of the secretary and the president, and the bond of the treasurer, provided for by the preceding section, shall have been filed and approved by the superintendent of insurance, the superintendent shall issue, to such company, his certifi-

cate, certifying such fact, and such certificate shall constitute the authority of such company to commence business. 86 O. L. 377.

(§ 3691-9.) Sec. 9. When charter may be forfeited—

Should the amount at risk in such company, at any time, become reduced below fifty thousand dollars, such company shall issue no more certificates or policies of insurance until bona fide applications, sufficient to restore such insurance to said amount, shall have been secured, and a sworn statement of such fact shall have been filed with and approved by the superintendent of insurance, and by him certified to the company; and should such company fail to so restore such amount, for the period of six months, then such company shall forfeit its right to do [the] business contemplated by this act; and when the liabilities of such company shall exceed three per cent of the amount of risk in force, as determined by the last preceding assessment, such company shall be deemed to be insolvent, and to have forfeited its charter; and such forfeiture shall be enforced by the superintendent of insurance by proceedings in quo warranto. 86 O. L. 377.

(§ 3691-10.) Sec. 10. Bond of secretary and treasurer—

The treasurer and secretary of such companies shall give bond for the faithful performance of their duties, to the directors or trustees of the company, in such sum and in such security as shall be prescribed in the by-laws of the company, the security to be approved by such directors or trustees. 86 O. L. 377.

(§ 3691-11.) Sec. 11. Directors—

The directors or trustees of such company shall, before qualified, take an oath, to be administered by any officer authorized to take acknowledgments of deeds to faithfully perform the duties required of them as such officers. 86 O. L. 377.

(§ 3691-12.) Sec. 12. Statement of secretary and bond of treasurer to be filed with commissioner of insurance—

Any company or association, organized under sections 3686 and 3687 of the Revised Statutes of Ohio, as amended February 27, 1885, for the purpose of insuring its members against loss from

death of domestic animals, and still doing business shall, within ninety days after the passage of this act, file the statement, and the treasurer shall file his bond as provided in section 7 of this act, and, failing so to do, shall forfeit the right to do the business contemplated by this act. 86 O. L. 377.

(§ 3691-13.) Reinsurance—

Any fire, marine, fidelity, accident, plate glass, boiler, or other insurance company, now or hereafter organized or existing, under or by virtue of the laws of Ohio, shall have authority, by and with the consent and approval of the commissioner of insurance, to re-insure any and all risks undertaken by it, in any company authorized by law to transact a similar class of insurance business in this state. 81 v. 179.

(§ 3691-14.) Sec. 1. Credit guarantee companies—Organization—

Any number of persons not less than five, may associate and form a company to guarantee and indemnify merchants, manufacturers, traders, and those engaged in business and giving credit, from loss and damage by reason of giving and extending credit to their customers and those dealing with them, by making, acknowledging, and filing articles of incorporation pursuant to, and by complying with sections 3588, 3589, and 3590, of the Revised Statutes of Ohio. 91 O. L. 415.

(§ 3691-15.) Sec. 2. Capital stock—

No such company shall be organized with a less capital than one hundred thousand dollars (\$100,000), and the whole capital shall, before proceeding to business, be paid in and invested in treasury notes, in stocks or bonds of the United States, in stocks or bonds of the State of Ohio, or of any municipality or county thereof, or in mortgages on unincumbered real estate within the State of Ohio, worth double the amount loaned thereon at the time such loan is made. 91 O. L. 415.

(§ 3691-16.) Sec. 3. Increase of capital—

Any such company may increase its capital stock as provided in section 3592 of the Revised Statute of Ohio. 91 O. L. 415.

(§ 3691-17.) Sec. 4. Investment of capital—Deposit with superintendent of insurance—

Any such company may invest its capital stock and change such investment, as provided in section *thirty-five hundred and ninety-three* of the Revised Statutes of Ohio; but no such company shall commence business until it has made the deposit of securities provided for in said section, which shall be held and controlled by the superintendent of insurance for the purpose and in the manner provided in said section *thirty-five hundred and ninety-three* and in section *thirty-five hundred and ninety-four* of the Revised Statutes of Ohio. 91 O. L. 415.

(§ 3691-18.) Sec. 5. Certificate of deposit authority for transacting business—

When such company is fully organized and has deposited the requisite amount of securities, as hereinbefore provided, together with a certified copy of the papers required by this act, the superintendent of insurance shall, unless he find the name assumed by such company so nearly similar to the name of another company organized in this state as to lead to uncertainty or confusion on the part of the public, furnish such company with a certificate of such deposit and of authority to commence and transact business. 91 O. L. 415.

(§ 3691-19.) Sec. 6. Powers of companies—

No such company shall undertake any business or risk except as herein provided, and such companies shall have the right, power, and authority to agree to pay to merchants, manufacturers, dealers, and persons engaged in business and giving credit, the debt or debts, or such part thereof as may be agreed upon, owing to them, or which may be thereafter owing to them, and to indemnify them from loss on account thereof in such an amount or per cent. as may be agreed upon, and to charge and receive therefor such a sum or per cent. as the consideration for such an agreement, guaranty or indemnity as shall be agreed upon between such corporation and the person guaranteed or indemnified, and to buy, hold, own, and take an assignment of any and all claims, accounts and demands so guaranteed, and to hold, own and collect the same, and to enforce the collection thereof by action the same as the original holder and owner thereof might or could do; and such corporation may also guarantee the payment

of money for personal services under contract of hiring. Any such corporation may use its capital stock or its funds accumulated in the course of its business to purchase or pay for any claim or demand, the payment of which it has guaranteed; or against the loss of which it has indemnified the holder; and such of its capital stock or accumulated funds as may not be so used shall be invested in the same classes of securities in which the deposit to be made with the superintendent of insurance is required by the provisions of this act to be invested; provided, that when on account of losses or otherwise, the amount of the funds of any such corporation shall fall below such sum as is required to be deposited by this act, no further guarantee of indemnity shall be issued until the deficiency has been made good. 91 O. L. 415.

(§ 3691-20.) Sec. 7. Annual statements of companies—

The president or vice-president of each company organized under this act, or under the laws of any other state, and doing business in this state, shall, annually, on the first day of January, or within thirty days thereafter, prepare under oath and deposit in the office of the superintendent of insurance a statement of the condition of such company on the thirty-first day of December then next preceding, exhibiting the following facts and items, and in the following form, to wit:

First. The amount of the capital stock of the company, specifying the amount paid and unpaid.

Second. The property or assets held by the company, specifying :

1. The value of the real estate owned by such company, where it is situated, and the value of the buildings thereon.

2. The amount of cash on hand and deposited in banks to the credit of the company, specifying in what banks the same is deposited.

3. The amount of cash in the hands of agents and in course of transmission.

4. The amount of loans secured by bonds and mortgages which are first liens on real estate and on which there is less than one year's interest due.

5. The amount of loans on which interest has not been paid within one year.

6. The amount due the company on which judgments have been obtained, and the cash value thereof.

7. The amount of stocks in this state, the United States, of any city in this state, and of any other stocks owned by the company, specifying the amount, number of shares, and the par and market-value of each kind of stocks.

8. The amount of stock held as collateral security for loans, with the amount loaned on, and the par and market value of each kind of stock.

9. The amount of unpaid assessments on stock, premium notes or contingent liabilities.

10. The amount of interest due and unpaid, and the amount of interest accrued but not due.

11. The amount of premium notes or contingent liabilities on which policies or bonds of guaranty or indemnity are issued.

12. The number of policies or bonds of guaranty or indemnity in force.

13. The amount of premiums received thereon.

14. The amount and description of all other assets.

15. The amount guaranteed under all policies in force.

Third. The liabilities of the company, specifying:

1. The amount of losses due and unpaid.

2. The amount of claims for losses resisted by the company.

3. Gross losses in process of adjustment or in suspense, including all reported and supposed losses.

4. The amount of dividends declared and due and remaining unpaid.

5. The amount of dividends, either cash or scrip, declared, but not due.

6. The amount of money borrowed, and the security given for the payment thereof.

7. The amount of all other existing claims against the company.

Fourth. The income of the company during the preceding year, specifying:

1. The amount of cash premiums received.

2. The amount of notes or contingent assets received for premiums.

3. The amount of interest money received.

4. The amount of income received from other sources.

Fifth. The expenditure during the preceding year, specifying:

1. The amount of losses paid during the year, stating how much of the same accrued prior and how much subsequent to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement.
2. The amount of dividends paid during the year.
3. The amount of expenses paid during the year, including commissions and fees to agents and officers of the company.
4. The amount paid for taxes.
5. The amount of all payments and expenditures.
6. The amount of scrip dividend declared. 91 O. L. 415.

(§ 3691-21.) Sec. 8. Requirements of companies of other states—

Any corporation, company or association organized under the laws of any other state of the United States to transact a like business as that provided for in this act, may be admitted and licensed to do business in this state; but as a condition precedent to being admitted to, and transacting business in this state, shall comply with the following conditions, to wit: Deposit with the superintendent of insurance (1) a certified copy of its charter or articles of incorporation; (2) a certificate from the insurance commissioner or superintendent of insurance of its own state showing its authority to do such business; (3) a certificate from said commissioner or superintendent or like authority of its own state that corporations, companies or associations of this state engaged in a like business are, upon complying with the laws of said state, legally entitled to do business in such state; (4) a statement under oath of its president and secretary, or like officers, in the form provided for in this act of its business for the preceding year; (5) a copy of its policy, bond or guaranty, application and by-laws; (6) a certificate from the insurance commissioner, superintendent of insurance or other proper officer of its own state, that such company has invested at least one hundred thousand dollars of its assets in the interest-paying bonds or stocks of the United States or of this state, or of some other state of the United States, of the market value of one hundred thousand dollars in the city of New York, or in bonds and mortgages on unincumbered real estate in this state, or in the state under the laws of which it is organized, of at least

double the value of the amount loaned thereon; that such securities are held under the laws of such state by such officer for the benefit of all its policy, bond or guaranty holders; and such certificates shall also state the character of the securities held by such officer, and their value; (7) a duly certified copy of the resolution of its board of directors appointing an attorney in this state upon whom service of summons or other process in all actions begun in this state may be made. 91 O. L. 415.

(§ 3691-22.) Sec. 9. Exemption of company of other state from deposit in this state—

No deposit in this state shall be required of any corporation, company or association of another state, if such company, corporation or association has made the deposit in its own state, referred to in the last preceding section, and has filed with the superintendent of insurance of this state the certificate mentioned in the last preceding section as evidence of such deposit. 91 O. L. 415.

(§ 3691-23.) Sec. 10. Forfeiture of right to do business—

Any corporation organized under this act, or doing business in this state hereunder, which shall fail or refuse to file a statement or report, shall forfeit its right to do business under this act, which forfeiture the superintendent shall enforce by proceedings in quo warranto; and it is hereby made the duty of the attorney-general of the state to institute such proceedings upon his request in writing. 91 O. L. 415.

(§ 3691-24.) Sec. 11. Examination by superintendent of insurance—

Any such corporation, association or company shall be subject to examination by the superintendent of insurance of this state under and pursuant to the provisions of the laws of this state relative to the examination of life insurance companies. 91 O. L. 415.

(§ 3691-25.) Sec. 1. Licensing of companies organized for insuring against burglary, robbery, etc.—

Any insurance company organized or incorporated on the mutual plan under the laws of this state [or any other state] for

the purpose of insuring against loss or damage from burglary and robbery or attempt thereat, and securing against the loss of money and securities in course of transportation shall be authorized, admitted and licensed to do business in this state, as hereinafter provided. 94 O. L. 350.

(§ 3691-26.) Sec. 2. Requisites for beginning business—

Before any such company shall be authorized to transact business in this state, except to solicit and receive applications for insurance and portions and premiums thereof, as hereinafter provided, it shall have in force five hundred or more policies, on which premiums shall have been paid in cash, or shall be evidence by the written contracts or the policy holders, on which not less than one-fifth of the amount shall have been paid in cash, the cash and contracts for premiums shall amount in the aggregate to a sum not less than one hundred thousand dollars. The premium contracts so held shall constitute a part of the valid assets of the company. 94 O. L. 350.

(§ 3691-27.) Sec. 3. Copy of charter and statement to be filed; what statement shall contain—Foreign company to file last annual report; agent forbidden to transact business when company's reserve is impaired—Agent to procure certificate from superintendent of insurance—

And every such company, association or partnership shall also file a certified copy of its charter, articles of incorporation or deed of settlement, together with a statement under the oath of the president or vice-president and secretary of the company for which he or they may act, stating the name of the company and the place where located, a detailed statement of its assets, showing the number of policy holders, aggregate amount of premium contracts, the amount of cash on hand, in bank, or in the hands of agents, the amount of real estate, and how the same is encumbered by mortgage, the number of shares of stock of every kind owned by the company, the par and market value of the same, amount loaned on bond and mortgage, the amount loaned on other securities, stating the kind and amount loaned on each, and the estimated value of the whole amount of such securities, and other

assets or property of the company; also stating the indebtedness of the company, the amount of losses adjusted and unpaid, the amount incurred and in process of adjustment, the amount resisted by the company as illegal and fraudulent, and all other claims existing against the company; and for a company organized under the laws of any other state, a copy of the last annual report, if any, made under any law of the state by which such company was incorporated, and no agent shall be allowed to transact business for any such company who [se] reinsurance reserve, as required by this act, as [is] impaired to the extent of twenty per cent thereof, while such deficiency shall continue. Nor shall it be lawful for any agent or agents to act for any company or companies referred to in this act, directly or indirectly, in taking risks or transacting the business of burglary and robbery insurance or the insurance of the safe shipment of money and securities, without procuring from the superintendent of insurance a certificate of authority, stating that such company has complied with all the requirements of this act which apply to such companies, and as to companies organized under the laws of any other state there shall be added the name of the attorney appointed to act for the company. 94 O. L. 350.

(§ 3691-28.) Sec. 4. Character of business to be conducted in this state—Reinsurance reserve—

Any company organized, admitted, and licensed to transact business in this state under this act shall confine its line of business to that stated in the first section of this act, and shall confine its business in this state to banks, bankers, loan companies, trust companies, city and county treasurers, and shall not issue any policy or policies to [any] person, firm, or corporation in this state other than banks, bankers, loan companies, trust companies, city and county treasurers. Every such company shall set aside a reinsurance reserve of fifty per cent of its premiums for unexpired term, whether collected in cash or represented by the obligations of the policy holders, as written in its policies. 94 O. L. 350.

(§ 3691-29.) Sec. 5. Liability of policy holders—

Policy holders of any company organized and admitted to transact business in this state under this act, shall be held liable to

pay the membership fee and premium on their insurance as paid or contracted to be paid at the time the policy is taken out, and shall not be held liable for any further or other assessments or claims on the part of the company or its policy holders. The membership fees and premium agreed upon may be collected in cash at the time the policy is issued or evidenced by written obligation of the policy holder, as may be agreed upon by the company and the policy holder. Such payment or obligation shall be the limit of the liability of the policy holder to the company for premium on their insurance. 94 O. L. 350.

(§ 3691-30.) Sec. 6. Appointment of attorney—Service of process—

It shall not be lawful for any insurance company, association, or partnership incorporated by or organized under the laws of another state of the United States for any of the purposes specified in this act, directly or indirectly, to take risks or transact any business of insurance in this state by any agent or agents in this state, until it shall first appoint an attorney in this state, who shall be the superintendent of insurance on whom process of law can be served, and file in the office of the superintendent of insurance a written instrument duly signed and sealed, certifying such appointment, and any process issued by any court of record in this state, and served upon such attorney by the proper officer of the county in which such attorney may reside or be found, shall be deemed a sufficient service of the process upon such company. 94 O. L. 350.

(§ 3781-31.) Sec. 7. Annual statements—Revocation of authority of company—

The statement and evidence of membership, assets, and investments required by section three of this act, shall be renewed from year to year in such a manner and form as may be required by said superintendent of insurance with an additional statement of the amount of premiums received in this state during the preceding year, so long as such agency continues, and the said superintendent of insurance, on being satisfied that the membership, assets, securities, and investments remain secure, as hereinbefore mentioned, shall furnish a renewal of the certificate as aforesaid. Any corporation organized under this act doing business in this state hereunder, which shall violate any of the provisions of this

act, the superintendent of insurance shall revoke its authority to do business in this state, and no renewal of authority shall be granted to it for a period of one year after such revocation. 94 O. L. 350.

[Sections 3691-25-27 provide for incorporation of persons therein named as a state board of agriculture.]

AGRICULTURAL CORPORATIONS.

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- 3713-10. Appropriation of land to enlarge fair grounds.
- 3713-11. Proceedings to be conducted by directors.

§ 3692. Annual meeting of state board of agriculture—

There shall be held in the city of Columbus, on the first Thursday after the second Monday in January, an annual meeting of the Ohio state board of agricultural, together with the president of each county agricultural society, or duly authorized delegate therefrom, who shall, for the time being, be ex-officio members of the state board of agriculture, for the purpose of deliberation and consultation as to the wants, prospects and condition of agriculture throughout the state; and at such meeting, the several reports from the county societies shall be delivered to the president of the state board of agriculture, and, at the annual meeting to be held in 1898, there shall be elected five members of the state board of agriculture, two members for a term of two

years, two members for a term of three years, and one member for a term of four years; and, at the annual meeting to be held in 1899, there shall be elected five members, one member for a term of three years, two members for a term of four years, and two members for a term of five years; and annually thereafter there shall be elected two members whose term shall be five years, and until their successors are elected, 93 v. 3.

§ 3693. Annual report of board to general assembly—

The board may elect such officers as may by it be deemed necessary. It shall hold an annual exhibit of the agricultural and general productive industries of the state; shall make an annual report to the general assembly, embracing its proceedings for the past year, and an abstract of the proceedings of the several county agricultural societies, as well as a general view of the condition of agriculture throughout the state, accompanied by such recommendations as it may deem interesting and useful. 79 O. L. 70.

§ 3694. State board of agriculture—Power and duty of—

The board may hold in fee-simple such real estate as it may have heretofore purchased, or may hereafter purchase, as sites whereon to hold its annual fairs, and all such lands held by the board for said purpose shall be exempt from taxation, but when any such real estate as may have heretofore been purchased or may hereafter be purchased, shall cease to be used by the board as sites whereon to hold such annual fairs, then such real estate, with the improvements thereon, belonging to the board, shall revert to the State of Ohio, and no portion of any such real estate shall be disposed of except by act of the legislature. The board shall have the power to audit and pay its ordinary expenses, including the necessary personal expenses of the members in their attendance on the meetings of the board, out of any funds in its possession or out of the state agricultural fund, and shall, in its annual report make a complete showing of its financial transactions; and the attorney-general shall act as the legal adviser of the board, the same as for other state departments. 82 O. L. 248.

Power to raise \$50,000 by bonds to aid the Centennial Exposition of 1888 was conferred in 85 O. L. 323.

§ 3695. How state agricultural fund at disposal of board—

The state agricultural fund shall be at the disposal of the board for the improvement of the agricultural interests of the state; and when escheated property is legally reclaimed by any heir, it shall be held subject to the payment, to the purchaser of the state, of so much of the original purchase money as it received and legal interest to the time of such reclamation. 45 v. 43, § 6; S. & C. 65.

§ 3696. Board entitled to stationery—

The secretary of state is authorized to furnish the board with such stationery as may be requisite to the proper discharge of its duties, together with such blank books as may be necessary to keep the records of the transactions of the board, not exceeding two hundred dollars in value. 61 v. 83, § 1; S. & S. 5.

DISTRICT AND COUNTY AGRICULTURAL SOCIETIES.**§ 3697. Organization of district or county agricultural societies—Additional society in Cuyahoga—**

When thirty or more persons, residents of any county, or district embracing two or more counties, organize themselves into a society for the improvement of agriculture within such county or district and adopt constitutions and by-laws agreeable to the rules and regulations to be furnished by the state board of agriculture, and appoint the usual and proper officers, and the society pays to its treasurer, by voluntary subscription, or by fees imposed upon its members, any sum of money in each year not less than fifty dollars, and the president of the society certifies to the respective county auditors the amount thus paid, attested by the oath of the treasurer before a magistrate, the county auditors embraced within the district in which such society is organized shall draw an order on the treasurer of the respective counties in favor of the president and treasurer of the society, for a sum equal to the amount thus raised, not exceeding two cents to each inhabitant of the county upon the basis of the last previous national census, but not exceeding in any county the sum of eight hundred dollars; and the treasurer of said [the] county shall pay the same. Provided, that where in any county containing a city of the second grade of the first class, the site for holding county fairs is situated so far from the geographical

center of said county, that, in the opinion of the commissioners of said county, the agricultural interests of said county will best be promoted by the establishment of another and additional society and site whereon to hold fairs; upon the organization of such additional society in the manner provided herein, said additional society shall be entitled to receive out of the county treasury in any sum not to exceed the amount which said commissioners are now authorized to allow by this section and section 3702a. 94 O. L. 395.

See 84 v. 4 for provisions as to Morgan county.

See 86 v. 113 as to certain counties.

For provisions for extending and improving grounds in Hamilton county, see 89 v. 248.

§ 3698. For what premiums may be offered by agricultural societies—

The several county or district societies which may be formed under the provisions of the preceding section shall, annually, offer and award premiums for the improvement of soils, tillage, crops, manures, implements, stock, articles of domestic industry, and such other articles, productions and improvements as they deem proper, and may perform all such acts as they deem best calculated to promote the agricultural and household manufacturing interests of the district and of the state, and shall regulate the amount of premiums, and the different grades of the same, so that it shall be competent for small as well as large farmers to have an opportunity to compete therefor, and, in making their awards, special reference shall be had to the profits which accrue, or are likely to accrue, from the improved mode of raising the crop, or of improving the soil, or stock, or of the fabrication of the articles thus offered, so that the premium shall be given for the most economical mode of improvement; and all persons offering to compete for premiums on improved modes of tillage, or the production of any crops or other articles, shall be required, before such premium is adjudged, to deliver to the awarding committee a full and correct statement of the process of such mode of tillage or production, and the expense and value of the same, with a view of showing accurately the profits derived or expected to be derived therefrom; provided, that during any year, when the state board of agriculture shall hold its fair upon the grounds of any county or district agricultural so-

ciety, such society shall be excused, if its board of directors so decide, from complying with the provisions of this section, and shall incur no forfeiture of its rights as such agricultural society by reason of not holding such fair. 77 O. L. 143.

§ 3699. Must publish a list of awards, etc.—

County and district societies shall publish, annually, a list of awards, and an abstract of the treasurer's account, in a newspaper of the district, and make a report of their proceedings during the year, and a synopsis of the awards for improvements in agriculture and household manufactures, together with an abstract of the several descriptions of these improvements, and also make a report of the condition of agriculture in their county or district, which report shall be made in accordance with the rules and regulations of the state board of agriculture, and shall be forwarded to the state board at its annual meeting in January in each year; and no subsequent payment shall be made from the county treasury unless a certificate be presented to the auditor, from the president of the state board, showing that such reports have been made. 58 v. 22, § 1; S. & S. 4.

§ 3700. County societies erected into corporations—

All county societies which have been or may hereafter be organized are declared bodies corporate and politic, and as such shall be capable of suing and being sued, and of holding in fee simple such real estate as they have heretofore purchased or may hereafter purchase as sites whereon to hold their fairs. 51 v. 333, § 1; S. & C. 66.

A county agricultural society is liable, in its corporate capacity, to an action for damages, by a person rightfully occupying a seat at a fair held by it, who is injured in consequence of negligence in construction of the seats. *Dunn v. Agricultural Society*, 46 Ohio St. 93.

§ 3701. Conveyances to such societies declared valid—

All deeds, conveyances, and agreements in writing, made to and by such county societies, for the purchase of real estate as sites whereon to hold their fairs, shall be good and valid in law and equity, and shall vest a title in fee simple in such societies to the real estate, without words of inheritance. 51 v. 333, § 2; S. & C. 67.

§ 3702. Commissioners may assist in purchasing, etc., sites for fairs—

When a county society has purchased or leased for a term of not less than twenty years, real estate as a site whereon to hold fairs, or where the title to the grounds is vested in fee in the county, but the society has the control and management of the the lands and buildings, the county commissioners may, if they think it for the interests of the county and society, pay out of the county treasury the same amount of money for the purchase or lease and improvement of such site as is paid by such agricultural society or individuals for such purpose; and such commissioners may levy a tax upon all the taxable property of the county sufficient to meet the provisions of this section. 84 O. L. 230.

§ 3701, 1-4. See note.

93 O. L. 358 and 316, provides for submission to vote of question of issuing bonds to liquidate debt of county society, and limitation upon right to use certain funds raised by taxation.

§ 3702a.

When a county society in a county containing a city of second grade of the first class has purchased or leased for a term of not less than twenty years, real estate as a site whereon to hold fairs, or when the title to the grounds is vested in fee in the county, but the society has the control and management of the lands and buildings the county commissioners may, if they think it for the interests of the county and society, pay out of the county treasury the same amount of money for the purchase or lease and improvement of such site or either of them, as is paid by such agricultural society or individuals for such purpose or either of them, and such commissioners may levy a tax upon all the taxable property of the county sufficient to meet the provisions of this section. 86 O. L. 69.

§ 3702b. See note.

93 O. L. 292, authorizes county commissioners to levy a tax to encourage agricultural fairs.

§ 3703. County commissioners may purchase fair grounds—

If a county society and the county commissioners decide that

the interests of the society and county demand an appropriation from the county treasury for the purchase and improvement of county fair grounds greater than that authorized by the preceding section, or without any action of or purchase by the society, the commissioners may levy a tax upon all the taxable property of the county, the amount of which shall be fixed by the commissioners, but shall in no event exceed one-half of one mill on the dollar of the taxable property in the county, in addition to the amount authorized in the last section to be paid for such purpose. 68 v. 50, § 3.

See 84 O. L. 79, for provisions as to Madison county.

See 77 O. L. 128 and 85 O. L. 110, for provisions as to Hamilton county.

§ 3704. The tax must be submitted to the electors—

No such additional tax shall be levied until the question as to the amount to be levied has been submitted by the commissioners to the qualified electors of the county at some general election, and a notice of which, specifying the amount to be levied, has been given at least thirty days previous to such election, in one or more newspapers published and of general circulation in the county; those voting at such election in favor of such tax shall have written or printed on their ballots, "Agricultural tax, Yes," and those voting against the same "Agricultural tax, No," and if a majority of the votes cast be in favor of paying such tax, the same may be levied and collected as other taxes; and when such tax is collected by the county treasurer, the auditor shall issue his order for the amount so collected to the treasurer of the county agricultural society, on his filing with the auditor an undertaking, in double the amount so collected, with good and sufficient sureties to be approved by the auditor, conditioned for the faithful paying over and accounting to such society for such funds. 68 v. 50, § 3.

§ 3705. When the real estate vests in the county—

When a society is dissolved, or ceases to exist, in any county where payments have been made for real estate, or improvements upon such real estate, or for the liquidation of indebtedness, for the use of such society, all such real estate and improvements shall vest in fee simple in the county by which such payments were made. 93 O. L. 360.

In Franklin county only, such lands shall be held for park purposes. 83 O. L. 192; 86 O. L. 252; 88 O. L. 104, 372.

§ 3705a (act 93 O. L. 40) authorizes county commissioners to insure buildings owned by the society.

(§ 3705-11.) Sec. 1—

Any number of persons not less than fifteen, a majority of whom shall be residents of the State of Ohio, are hereby authorized to become incorporated for the purpose of apprehending and convicting horse thieves and other felons. 84 O. L. 169.

These sections, though not properly placed, are so printed to conform to the order in the Revised Statutes as printed.

(§ 3705-12.) Sec. 2. Seal—Constitution—Officers—Oath of office—Certificate of appointment or election—Deputies—Powers of officers and members—

Any association so incorporated may make and use a common seal with the name of the corporation thereon. A majority of the members of such association shall have power to adopt a constitution and by-laws for their government; and may elect or appoint such officers as they may deem proper, who shall hold their office during the term provided for by the constitution and by-laws thereof, and who shall perform the duties required of them by said constitution and by-laws, and the provisions of this act; and the presiding officer of any such association or corporation may administer the proper oaths of office to any of its officers or members, and certify the appointment or election thereof under the seal of said corporation. The presiding officer may also appoint deputies, not exceeding one in each township, in any county or counties where such corporation is located, who may administer said oath of office, or membership, and certify the appointment or election thereof, which shall be valid when approved by said presiding officer under the seal of said corporation, and the officers or members of said association or corporation, upon the proper certificate of the presiding officer thereof, when so elected or appointed, shall have full power and authority, when a felony has been committed, to pursue and arrest, without warrant, any person or persons whom they believe, or have reasonable cause to believe, is guilty of the offense, and arrest and detain such

alleged criminal or criminals in any county in the state to which they may have fled, and return such accused person or persons to any officer of the county in which the offense was committed, and there detain such accused person or persons until a legal warrant can be obtained for his or their arrest. 87 O. L. 339.

§ 3705-13.) Sec. 3. Assessments—Indemnity for losses—Expenditures—

Any such association may make and collect from its members such assessments as may be authorized by its constitution or by-laws, and may, if so provided in its constitution, indemnify its members for losses caused by horse thieves or other felons, and expend such moneys as may be deemed necessary in the pursuit and arrest; and procuring the conviction of felons. 87 O. L. 339.

(§ 3705-14.) Sec. 4. Reimbursement of expenses by county—

Upon the apprehension and conviction of any such horse thief or other felon by any such association, the commissioners of the county in which the crime was committed may reimburse said association in any sum not exceeding one hundred dollars, for necessary expenses, not otherwise provided for by law, incurred in the apprehension and conviction of such criminal. 87 O. L. 339.

§ 3706. Societies may sell and purchase other sites—

When a county society desires to sell its site for holding county fairs, for the purpose of purchasing another site, it may sell the same in such manner and on such terms as it may deem proper, and the money arising from the sale shall be paid by the purchaser to the county treasurer, who shall pay it out only upon the certificate of the president and secretary of the society that the same is to be used in the purchase or improvement of another site; which site the certificate shall show to have been purchased; and in cases where the county has paid any portion of the purchase money for the site proposed to be sold, the written consent of the county commissioners shall first be given to such sale, and the money shall not be paid out of the treasury without their consent. 56 v. 76, § 1; S. & C. 69.

§ 3707. How conveyances to be excuted—

Conveyances of ground sold under the preceding section, which are owned exclusively by any society may be executed by the president of the society as such president; and grounds owned partly by the society and partly by the county may be conveyed by deed executed by the president of the society as such president, and by the county commissioners. 56 v. 76, § 2; S. & C. 69.

§ 3708. Society cannot incumber its grounds—

When the commissioners of any county have paid, or hereafter pay,, any money out of the county treasury for the purchase of real estate as a site for any agricultural society whereon to hold its fairs, such society shall not incumber such real estate with any debt, by mortgage or otherwise, without the consent of the commissioners. 72 v 42, § 1.

§ 3709. Incorporation of township societies—

When any number of natural persons of any township form a society for the promotion of agriculture in such township and under their hands and seals make a certificate, and acknowledge the same before a justice of the peace, in which shall be specified the name of the society, the objects of its formation, and the township in which it shall be located, and file the same in the office of the secretary of state, such society shall be deemed a body corporate, with succession, and with power to sue and be sued, defend and be defended, and contract and be contracted with, may make and use a common seal, and the same alter at pleasure, and may purchase, and hold in fee simple, or rent, or lease, such real estate as may be required as a site for holding fairs, not exceeding forty acres, and establish all necessary rules and regulations for the management of such fairs and the legitimate business of the society. 74 v. 30, § 1.

§ 3709a. Societies for the detection of horse thieves, etc.—

When any number of natural persons of any township form a society for the detection and arrest of horse thieves and other criminals, and for the mutual protection of the property of its members, such society may become a body corporate in the manner prescribed in section *thirty-seven hundred and nine* of the Revised Statutes, to which this is supplementary, with the right

of succession, and the right to make and use a common seal, and with power to sue and be sued, to contract and be contracted with, to levy and collect by suit if necessary, such assessments not exceeding three dollars annually, from each member as may be required to carry out the objects of the society, and to make for such society needful rules and regulations not in conflict with the laws of this state. 82 O. L. 63.

§ 3710. Justices of the peace may appoint special constables—

A justice of the peace may, on the application of a state, county, township, or an independent agricultural society, or industrial association, appoint a suitable number of special constables to assist in keeping the peace during the time when such society is holding its annual fair, and shall make an entry in his docket of the number and names of all such persons so appointed. 53 v. 141, § 1. S. & C. 67.

§ 3711. Powers of such constables—

Constables so appointed shall have all the power of constables to suppress riots, disturbances, and breaches of the peace; they may, upon view, arrest any person guilty of a violation of any of the laws of the state, and may pursue and arrest any person fleeing from justice in any part of the state; and they may apprehend any person in the act of committing an offense, and upon reasonable information, supported by affidavit, procure process for the arrest of any person charged with a breach of the peace, and forthwith bring such person before the competent authority, and enforce all the laws for the preservation of good order. 53 v. 141, § 2. S. & C. 68.

§ 3712. Duties of certain officers to suppress sale of liquor at fairs—

A judge of any court, sheriff, coroner, justice of the peace of the proper county, a constable of the proper township, or the constables specially appointed, shall, upon view or information, without warrant, apprehend any person selling intoxicating liquors in violation of law at or within two miles of the place where an agricultural fair is being held, and seize the booth, tent, wagon, carriage, stand, vessel or boat at or from which such liquors are being sold, and convey the same to a place

of safe keeping, and take the person so offending before some officer having competent jurisdiction, together with an inventory of the things so seized, and the officer before whom such offender is brought shall proceed forthwith to inquire into the truth of the accusation, and proceed as provided by law. 53 v. 141, § 4. S. & C. 68.

For penalty for trespass upon fair grounds or assembly grounds, etc., or injury thereto, see 82 O. L. 208; 86 O. L. 302.

The provision of section 6946, providing for arrest for sale of intoxicating liquor within two miles of agricultural fair, held to be constitutional. Heck v. State, 44 Ohio St. 536. Such sale is unlawful during entire period of the fair. Theis v. State, 54 Ohio St. 245.

A place where industrial products in agriculture, manufacturing and the arts are exhibited for profit is an agricultural fair, and within the provisions of section 6946 as to sale of intoxicating liquors. State v. Long, 48 Ohio St. 509.

§ 3713. How articles seized to be disposed of—

The articles so seized shall be bound for the payment of all fines and costs assessed against the accused in the proceeding, including the necessary expenses of seizing and detaining the same, and shall remain in the possession of the officer who makes the seizure until the determination of the prosecution, and may be sold on process issued therein against the accused. 53 v. 141, §§ 5, 6. S. & C. 68.

(§ 3713-1.) Sec. 1. When farmers institute society deemed body corporate—

That when twenty or more persons, residents of any county in the state, organize themselves into a farmers' institute society, for the purpose of teaching better methods of farming, stock raising, fruit culture and all branches of business connected with the industry of agriculture, and adopt a constitution and by-laws agreeable to rules and regulations furnished by the state board of agriculture; and when such society shall have elected proper officers and performed such other acts as may be required by the rules of the state board of agriculture, such society shall be deemed a body corporate. 92 O. L. 330.

(§ 3713-2.) Sec. 2. Number, times and places of annual meetings—

Not to exceed four farmers' institute societies organized under

the provisions of this act, shall hold annual meetings under the auspices of the state board of agriculture in any one county in the state, and the state board of agriculture shall have power to determine the number and name the times and places for holding such institute meetings. 92 O. L. 330.

(§ 3713-3.) Sec. 3. County payments to societies and state board of agriculture—

When a society organized under the provisions of this act shall have held an annual farmers' institute meeting in accordance with the rules of the state board of agriculture, the secretary of said board shall issue certificates, one to the president of the farmers' institute society and one to the president of the state board of agriculture, setting forth these facts and, on the presentation of these certificates to the county auditor, he shall each year draw orders on the treasurer of the county as follows: Based on the last previous national census, a sum equal to three mills for each inhabitant of the county in favor of the president of the state board of agriculture, and a sum equal to three mills for each inhabitant of the county in favor of the president of the farmers' institute society, where but one society is organized, but in counties where there are more than one farmers' institute society organized under the provisions of this act, and holding meetings under the auspices and by direction of the state board of agriculture, the said three mills for each inhabitant shall be equally apportioned among such societies, and warrants in the proper amounts issued to the respective presidents, and the treasurer of the county shall pay the same from the county fund; provided that in no county shall the total annual sum exceed two hundred and fifty dollars; and provided further, that the payment to any institute society shall not exceed the expenses, as per detailed statement, provided in section four of this act. 92 O. L. 330.

(§ 3713-4.) Sec. 4. Society's statement of expenses; what secretary's certificate to indicate—Provision inapplicable to state board—

With each certificate of the secretary of the state board of agriculture to the county auditor, which certificate shall indicate the number of societies organized in the county and holding meetings by direction of the state board of agriculture, and before the au-

ditor issues his order upon the treasurer there shall be filed with the auditor a detailed statement of the expenses of the institute for the current year, no part of which shall be for salaries of officers of the institute society; but this provision shall not apply to the order in favor of the president of the state board of agriculture, which board shall issue statement as required in section six of this act. 92 O. L. 330.

(§ 3713-5.) Sec. 5. Lecturers or speakers at annual meetings—

At the annual farmers' institute meetings, held under the provisions of this act and under the auspices of the state board of agriculture, the said board shall furnish lecturers or speakers whose compensation and expense shall be paid by the board. 92 O. L. 330.

(§3713-6.) Sec. 6. Publication and distribution of lectures and papers—Board's statement of receipts and disbursements—

At the close of each season's institute work, the state board of agriculture shall publish in pamphlet or book form, such lectures and papers delivered at the several institute meetings, as may seem of general interest and importance to the farmers, stock breeders and horticulturists of the state, copies of which shall be furnished the secretary of each institute society, and the balance issued to be for general distribution; the cost of preparing the matter and the distribution of the pamphlet or book to be paid by the state board of agriculture. Said board shall also publish, in such pamphlet or book, a detailed statement of its receipts under the provisions of this act and the disbursements on account of institute work. 92 O. L. 330.

(§ 3713-10.) Sec. 1. Appropriation of land for enlargement of fair grounds—

When it shall be deemed necessary by the board of directors of any county agricultural society to enlarge the fair grounds under the control of such society, and the owner or owners of the proposed addition to said grounds and the said board of directors are unable from any cause to agree upon the sale and purchase of said additional grounds, the board shall make an accurate plat and description of the land which it desires for said pur-

pose and file the same with the probate judge of the proper county; and thereupon the same proceedings of appropriation shall be had which are provided for the appropriation of private property by municipal corporations, said board to act for such society therein as the council would for the municipal corporation. 89 v. 52.

(§ 3713-11.) Sec. 2. Board of directors to prosecute proceedings—

That if, under any existing law, it is made the duty of the county commissioners to purchase any such additional grounds for the use of any such society, said board of directors shall prosecute the said proceedings of appropriation to their final conclusion, except so far as relates to payment, or any part of the purchase-money, before said commissioners shall be called upon to act in the matter. All such payments or deposits, not exceeding fifteen thousand dollars (\$15,000) in amount, shall be made by said commissioners when required so to do by said board of directors, or by the court, and no delay on the part of said commissioners shall defeat or prevent the purchase or appropriation aforesaid. 77 O. L. 128.

SOCIETIES TO PREVENT CRUELTY TO ANIMALS.

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SECTION

- 3721. Interpretation of certain words.
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§ 3714. "Ohio Humane Society"—Powers, etc.—

The Ohio state society for the prevention of cruelty to animals, heretofore incorporated, shall be and remain a body corporate, under the name of "the Ohio humane society," with all the powers, privileges, immunities, and duties heretofore possessed by said Ohio state society for prevention of cruelty to animals, hereinafter specified as to county associations, and may appoint

any person, in any county in this state where there is no such active association, to represent the state society, and to receive and account for all funds coming to the society, from fines or otherwise.

The objects of said society and all societies heretofore or hereafter organized under sections 3715 and 3716 of the Revised Statutes, shall be the inculcation of humane principles, and to secure the enforcement of laws for the prevention of cruelty, especially to children and animals, to promote which object the said societies may respectively acquire property, real or personal, by purchase or gift.

All property acquired by gift, devise, or bequest, for special purposes, shall be vested in a board of trustees consisting of three members elected by the society, which board shall manage said property, and apply the same in accordance with the terms of the gift, devise, or bequest, with power to sell the same and re-invest the proceeds.

Said society may elect such officers, and make such rules and regulations and by-laws as may be deemed necessary or expedient by their members for their own government and the proper management of their affairs.

Said society may appoint agents in any county of this state, where no active society exists under sections 3715 and 3716 of the Revised Statutes to represent the society, and receive and account for all funds coming to the society from fines or otherwise, and may also appoint agents at large to prosecute the work of said society throughout the state.

The agents of said society and of all societies heretofore or hereafter organized under sections 3715 and 3716 of the Revised Statutes, whose appointment has been approved as hereinafter provided, shall have power to arrest any person found violating any law for the protection of persons or animals, or the prevention of cruelty thereto, and upon making such arrest shall forthwith convey the person arrested before some court or magistrate having jurisdiction of the offense, and there make complaint against them, but said agents shall not be authorized to make such arrests within any municipal corporation unless their appointment has been approved by the mayor thereof, nor within any county beyond the limits of a municipal corporation, unless their appointment has been approved by the probate judge of said

county, and the mayor or probate judge shall keep a record of all such appointments.

Branches of the society consisting of not less than ten members may be organized in any part of the state to prosecute the work of the society in their several localities, under rules and regulations prescribed by the society.

Societies for the prevention of acts of cruelty to animals, organized in any county under section 3715, may become branches of said society by resolution adopted at a meeting thereof called for that purpose, a copy of which resolution shall be forwarded to the secretary of state. 84 O. L. 207.

§ 3715. Other societies authorized—

Societies for the prevention of acts of cruelty to animals may be organized in any county, by the association of not less than seven persons, and the members thereof shall, at a meeting called for the purpose, elect not less than three of their members directors, who shall continue in office until their successors are duly chosen. 72 v. 129, § 12.

§ 3716. How incorporated—

The secretary or clerk of the meeting shall make a true record of the proceedings thereat, which he shall certify, and forward to the secretary of state, who shall record the same; the record shall contain the name by which such association shall have determined to be known, and from and after the filing of the same the directors and associates, and their successors, shall be invested with the powers, privileges, and immunities incident to incorporated companies; and a copy of the record, duly certified by the secretary of state, shall be deemed and taken, in all courts and places in this state, as evidence that such association is a duly organized and incorporated body. 72 v. 129, § 13.

§ 3717. May elect officers and make regulations—

Such associations may elect such officers, and make such rules, regulations, and by-laws, as may be deemed necessary or expedient by their members for their own government, and the proper management of their affairs. 72 v. 129, § 15.

§ 3718. May appoint agents to enforce law—

Such associations may appoint agents for the purpose of prosecuting any person guilty of any act of cruelty to persons or animals within this state, who shall have power to arrest any person found violating any of the provisions of this chapter, or any other law, for the purpose of protecting persons or animals, or preventing any act of cruelty thereto; and, upon making such arrest, such agent shall convey the person so arrested before some court or magistrate having jurisdiction of the offense, within the municipal corporation or county wherein the offense was committed, and there forthwith make complaint, on oath or affirmation, of the offense; but all appointments by such associations under this section must have the approval of the mayor of the city or village in which the association exists, and if it exists outside of any city or village, the appointments must be approved by the probate judge of the county; and the mayor or probate judge shall keep a record of all such appointments. 81 O. L. 181.

**§ 3718a. Jurisdiction of justices, police judges and mayors, in prosecutions for adulteration and cruelty—
Judicial proceedings in such causes before
justices—Costs—Attorney in prosecuting such
cases—**

Any justice of the peace within his county and city, and police judge or mayor of any city or village, within his city or village, shall have jurisdiction in cases of violation of the laws to prevent adulteration of food and drink, the adulteration and deception in sale of dairy products, and drugs and medicines, and any violation of the law for prevention of cruelty to animals, or under section *sixty-nine hundred and eighty-four* of Revised Statutes or section 6984a thereof, as herein enacted. If such prosecutions be before a justice of the peace and a trial by jury be not waived the said justice shall issue a venire to any constable of the county, containing the names of sixteen electors of the county to serve as jurors to try such case and make due return thereof. Each party shall be entitled to two peremptory challenges, and shall be subject to same challenges as jurors are subject to in criminal cases in court of common pleas. If the venire of sixteen names be exhausted without obtaining the required number to fill the panel, the justice may direct the constable to summon any of the bystanders

to act as jurors; provided, that in all cases prosecuted under the provisions of this section, no costs shall be required to be advanced or paid by person or persons authorized under the law to prosecute such cases; and provided, further, that in all cases brought under the provisions of this section, if the defendant be acquitted, or if convicted and committed in default of paying fine and costs, the costs of each case shall be certified under oath to county auditor, who, after correcting the same, shall issue a warrant on county treasurer, in favor of the person or persons to whom such costs and fees shall be paid. And in cases brought for any violation of law for the prevention of cruelty to animals, or under section *sixty-nine hundred and eighty-four* of Revised Statutes, or under section 6984a or 7017-3 thereof, the humane society or their agents, may employ an attorney to prosecute the same, who shall be paid for his services out of the county treasury, as the county commissioners may deem just and reasonable. 94 O. L. 91.

§ 3719. Magistrate may authorize certain inspections—

When complaint is made, on oath or affirmation, to a magistrate or court authorized to issue warrants in criminal cases, that the complainant believes that any of the provisions of law relating to or affecting animals are being or are about to be violated in any particular building or place, such magistrate or court shall issue and deliver immediately a warrant directed to any sheriff, constable, police officer, or agent of such association, authorizing him to enter and search such building or place, and to arrest any person there present violating or attempting to violate any such law, and to bring such person before some court or magistrate of competent jurisdiction within the city, village or county within which such offense has been committed, to be dealt with according to law; and such attempt shall be held to be a violation of such law, and shall subject the person charged therewith, if found guilty, to the penalties provided therein. 72 v. 129, § 17.

§ 3719a. Examination—Penalty—

When a sheriff, constable, marshal, police officer, or any agent for any duly incorporated society for the prevention of cruelty to animals has reason to believe that any person within his jurisdiction is about to violate the provisions of section *sixty-nine hundred and fifty-two* of the revised statutes, he shall forthwith arrest

such person, and take him before a magistrate named in section *seventy-one hundred and six*; upon the proper affidavit being filed, such officer shall hear the witnesses produced, on oath, and if he find the complaint true, order the accused to enter into a recognizance, with sufficient sureties, in a sum not less than one hundred nor more than five hundred dollars that he will not violate the provisions of said section *sixty-nine hundred and fifty-two* within one year thereafter, within this state, and in default of such recognizance the officer shall commit the accused to jail, there to remain until such order is complied with, or he is otherwise discharged by due course of law, or until he shall make and subscribe an oath, in the presence of two witnesses, that he will not violate the provisions of said section *sixty-nine hundred and fifty-two* of the Revised Statutes of Ohio, nor aid or abet in so doing, within said year. Upon conviction of such person for a subsequent violation of the provisions of said section within said year, he shall be fined not less than twenty-five dollars (\$25), nor more than five hundred dollars (\$500), or imprisoned not less than thirty days nor more than ninety days, or both, in the discretion of the court. 81 O. L. 181.

§ 3720. Police powers of officers and agent—

An officer, agent, or member of such association may interfere to prevent the perpetration of any act of cruelty to animals in his presence, and may use such force as may be necessary to prevent the same, and to that end may summon to his aid any bystanders. 72 v. 129, § 18.

§ 3721. Interpretation of certain words—

In this chapter, and in every law of the state relating to or in any manner affecting animals, the word "animal" shall be held to include every living dumb creature; the words "torture," "torment," and "cruelty," shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief; and the words "owner" and "person" shall be held to include corporations; and the knowledge and acts of agents and employes of corporations, in regard to animals transported, owned, employed by, or in the custody of a corporation, shall be held to be the act of such corporation. 72 v. 129, § 19.

§ 3722. Member may require police officer to act—

A member of any such association may require the sheriff of any county, the constable of any township, the marshal or policeman of any city or village, or the agent of any such association, to arrest any person found violating the laws in relation to cruelty to persons or animals, and to take possession of any animal cruelly treated, in their respective counties, cities, or villages, and deliver the same to the proper officers of such association; and for such service, and for all services rendered in carrying out the provisions of this chapter, such officers, and the officers and agents of the association, shall be allowed and paid such fees as they are allowed for like services in other cases, which shall be charged as costs, and reimbursed to the association by the person convicted. 81 O. L. 181.

§ 3723. A person guilty is liable in damages—

A person guilty of cruelty to an animal, the property of another, shall be liable to the owner thereof in damages, in addition to the penalties prescribed by law. 72 v. 129, § 11.

§ 3724. Conviction of agent no bar to action against principal—

The conviction of an agent or employe shall not bar an action for cruelty to animals against an employer for allowing a state of facts to exist which will induce cruelty to animals on the part of such agent or employer. 72 v. 129, § 9.

§ 3725. Any person may protect an animal from neglect—

Whenever it may be necessary, in order to protect any animal from neglect, any person may take possession of the same; and whenever an animal is impounded, yarded, or confined, and continues without necessary food, water, or proper attention for more than fifteen successive hours, any person may, from time to time, and as often as it may be necessary, enter into and upon any place in which such animal is so impounded, yarded, or confined, and supply it with necessary food or water, and attention, so long as it there remains, or may, if necessary or convenient, remove such animal, and shall not be liable to any action for such entry; in all cases the owner or custodian of such animal, if known, shall be immediately notified of such action by the per-

son taking possession of such animal; if the owner or custodian be unknown and cannot be ascertained with reasonable effort, such animal shall be held to be an estray, and shall be dealt with as such; the necessary expense for food and attention given to any animal under the provisions of this section may be collected of the owner of such animal, and the animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor. 81 O. L. 181.

3725a.

Any sheriff, constable, marshal, policeman, or agent of any society for the prevention of cruelty to animals, may kill, or cause to be killed any animal found neglected, or abandoned, and which, in the opinion of three reputable citizens, is injured or diseased, past recovery, or by age has become useless. 81 O. L. 181.

Held unconstitutional. Brill v. Humane Soc., 4 C. C. 358.

(§ 3725-1.) Sec. 1. Removal of child from possession of parent by officer of humane society—Notice to be served upon person having possession of child and upon parents—

Whenever any officer or agent of a society in this state, organized under title 2, chapter 13, of the Revised Statutes, shall deem it for the best interest of any child, either by reason of cruelty inflicted upon said child, or by reason of the surroundings of the child, that said child be removed from the possession and control of the parents or other person or persons having charge thereof, said officer or agent may take possession of said child summarily; and shall cause a notice to be personally served upon the person having control or possession of said child, and upon the parent or parents of said child, if within the state, that the said society will apply to the probate court of the county in which said society is situated, at a time and place named in such notice, for an order as hereinafter set forth. 93 O. L. 296.

(§ 3725-2.) Sec. 2. Order of probate court making general agent of society guardian of child—Guardian to provide home for child—

At the time set forth in said notice, if it shall appear to the

satisfaction of the probate judge, that it is for the best interest of said child that possession and control thereof be taken from said parent or other person having control or possession thereof, said probate judge shall make an order conferring upon the general agent of said society the powers of a guardian as to such child; and, as such guardian, said general agent may, with the approval of the probate judge, provide a suitable home for such child until such child reaches the age of majority, or until such time as the probate judge may be satisfied that the parent or parents of said child are in a position to properly provide and care for said child. 93 O. L. 296.

COLLEGES AND INSTITUTIONS OF LEARNING.

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§ 3726. Certain corporations may appoint a faculty and confer degrees—

The trustees of a college, university, or other institution of learning, incorporated for the purpose of promoting education, religion, morality, or the fine arts, which has acquired real or personal property of the value of five thousand dollars, and which has filed in the office of the secretary of state a schedule of the kind and value of such property, verified by the oaths of the trustees, may appoint a president, professors, and tutors, and any other necessary agents and officers; and fix the compensation of each, and may enact such by-laws, not inconsistent with the laws of this state or of the United States, for the government of the institution, and for conducting the affairs of the corporation, as they may deem necessary; and may, on the recommendation of the faculty, confer all such degrees and honors as are conferred by colleges and universities of the United States, and such others having reference to the course of study, and the accomplishments of the student, as they may deem proper. 50 v. 128, § 1; 51 v. 403, §§ 2, 3; S. & C. 266, 270.

§ 3727. May hold donated property in trust—

Any university, college, or academy, or the trustees thereof, may hold in trust any property devised, bequeathed, or donated to such institution, upon any specific trust consistent with the objects of the corporation. 50 v. 128, § 5; S. & C. 267.

When a written subscription is accepted, and liabilities incurred on the faith of it, its collection cannot be defeated for supposed want of consideration. *Wesleyan College v. Love's Ex'r*, 16 Ohio St. 20; *Irwin, Adm'r, v. Webster Treas.*, 7 C. C. 269; affirmed in 37 B. 150; *Sutton, Adm'r, v. Trustees*, 7 C. C. 343, affirmed in 35 B. 260.

A charitable (educational) institution may receive donations by promise, and if expenditures are made on the faith of such promises, can recover on the same. A note taken under such circumstances can be transferred to pay its indebtedness. *Deurell v. Belding*, 9 C. C. 74.

§ 3728. Who constitute the faculty; its powers—

The president and professors shall constitute the faculty of any incorporated literary college or university, and may enforce the rules and regulations enacted by its trustees for the government and discipline of the students, and suspend and expel offenders, as may be deemed necessary. 50 v. 128 § 6; S. & C. 267.

§ 3729. May teach mechanics and agriculture—

Any incorporated university, college, or academy may connect therewith, to be used as a part of its course of education, any mechanical shops and machinery, or lands for agricultural purposes not exceeding three hundred acres, to which may be attached all necessary buildings for carrying on the mechanical or agricultural operations of such institution. 50 v. 128, § 8; S. & C. 267.

§ 3730. May change stock into scholarships—

Any company formed in pursuance of this title, or which now exists by virtue of any special act of incorporation, the property of which is held as stock, and not derived by donation, gift, devise, or gratuitous subscription, may change its capital stock into scholarships, when it becomes necessary for the purpose of carrying out the object for which it was formed, in the manner provided in section *thirty-two hundred and sixty-two*. 50 v. 128, §§ 9, 10; S. & C. 268.

§ 3731. Location may be changed, and how—

A college, university, or other institution of learning, now existing by virtue of any act of incorporation, or that may hereafter become incorporated for any of the purposes specified in this chapter, may, if three-fourths of the trustees or directors thereof deem the same proper, or if the institution is owned in shares, or by stock subscribed or taken, by a vote of the holders of three-fourths of the stock or shares, change the location of such institution, convey its real estate, and transfer the effects thereof, and invest the same at the place to which such institution may be removed; but no removal shall be ordered, and no vote taken thereon, until after publication in the manner provided in the last section, in which notice shall be fully set forth the place to which it is proposed to remove such institution; and, in case of

removal, a copy of the proceedings of such meeting shall be filed with the secretary of state. 52 v. 77, § 12; S. & C. 268.

§ 3732. When and how college endowment fund diverted—

The trustees of a corporation incorporated for the purpose of creating, holding, and managing a college endowment fund, the articles of incorporation of which provide that the fund may be applied to any object not inconsistent with the purposes of education different from that particularly specified therein, may apply to the court of common pleas in the county where the corporation is located for permission to make such change, designating particularly the purposes to which it is proposed to apply the fund; and the court, on being satisfied that such change is not inconsistent with the object of the original creation and institution of the fund, shall authorize and sanction the change. 51 v. 393, § 2; S. & C. 269.

The property of a private eleemosynary corporation, although charged with the maintenance of a college or other "public charity" is private property, within the meaning and protection of that clause of section 19, of article 1, of the constitution of this state, which declares that "private property shall ever be held inviolate." The result of the statute of April 15, 1892 (89 O. L. 647), giving absolute control and management of the affairs and property of the Cincinnati College to the directors of the University of Cincinnati, is to take the property of the former and donate it to the latter. The statute therefore conflicts with section 19, of article 1, of the constitution of this state, and is void. Ohio v. Neff, 52 Ohio St. 375.

The creation of a fund to pay debt of educational institution is not a consideration for a written promise to contribute thereto, where nothing has been done in reliance on such promise; and acceptance of the promise, agreeing to use the money exclusively to pay the debt, does not give rise to a case of mutual promises which would enable the corporation to collect the note. Johnson v. Otterbein Univ., 41 Ohio St. 527; *distinguished* in Irwin, Admr., v. Lombard Univ., 56 Ohio St. 9, where it is held that "The consideration for a promissory note executed to an incorporated college is the accomplishment of the purposes for which it is incorporated and in whose aid the note is executed; and such consideration is sufficient."

§ 3733. How vacancies in board filled in certain cases—

Whenever there occurs a vacancy, in whole or in part, in the board of trustees of an incorporated college, seminary or academy, by reason of an amendment of the charter in such corporation, or from any other cause, and there is no provision of law for filling such vacancy, the governor shall, within three months after receiving information thereof, appoint the required number of trus-

tees, one-third thereof to serve for one year, one-third to serve for two years, and one-third for three years. 75 v. 25, § 2.

**§ 3734. Certain corporations may increase their property
—Bonds in anticipation of donations—**

A college, university, academy, seminary, or other institution devoted to the promotion of education, now existing by virtue of any special act of incorporation, or organized under the provisions of any law, whose property is derived and held by donation, gift, purchase, devise, or gratuitous subscription, and the amount of which, or the income arising therefrom, is limited by such special act, or by the articles of association adopted by such institution, may receive, acquire, possess and hold hereafter any amount of property, real, personal or mixed, which its board of directors or trustees shall deem it advisable for the institution to accept, and may, by its trustees, sell, dispose of and convey the same, but such property shall not be diverted from the express will of the donor, deviser or subscriber. The board of trustees of any such college, university, academy, seminary, or other institution devoted to the promotion of education, in anticipation of donations to be received and collections to be made, may, for the purpose of constructing, enlarging or adding to any college buildings or improvements, borrow such sum of money as they may determine necessary for such purpose, and may issue bonds therefor and secure the same by a mortgage upon the property upon which such improvement is to be made, provided such property is not held by them under some specific trust. 90 O. L. 71.

§ 3735. Statement to be made and filed—

Before any such institution shall be authorized to acquire and hold such additional property, the trustees thereof, at a regular meeting of their board, or at a special meeting called for that purpose, shall, from time to time, make and sign a statement specifying the amount of such additional property which they seek to acquire and hold, and shall set forth therein the purposes to which it is to be devoted, which statements shall be entered at large upon the record book of the trustees and be filed in the office of the secretary of state. 90 O. L. 71; S. & C. 368.

§ 3736. How certain boards may be constituted and governed—

The board of trustees of any university or college heretofore incorporated, and now under the patronage of four or more conferences or other religious bodies of any religious denomination, may accept the provisions of this and the nine succeeding sections, by resolutions adopted at any regular meeting of the board, and entered upon the record of its proceedings; and after such acceptance the board shall in all respects be organized, constituted, regulated and perpetuated pursuant to and under said provisions; but no right acquired by any such board, or any such university or college, under its charter, or any law of this state, shall, in any way, be affected by said provisions. 65 v. 188, § 1. S. & S. 106.

§ 3737. Trustees to be divided into classes—

At a meeting of such board held after a vacancy occurs therein it shall fill such vacancy, or if more than one vacancy has occurred, then one of them, by appointing the president of the university or college a trustee, and the president of such university or college shall, ex officio, be a trustee perpetually thereafter; the board shall also, at such meeting, divide its number, excluding the said president, and including all vacancies except the one he is so appointed to fill, into classes, corresponding in number to the number of conferences or other religious bodies at the time patronizing such university or college, such classes to have in each an equal number of trustees, as near as may be; and the board shall assign one of such classes to each of the conferences or other religious bodies, and thereafter each may fill any and all vacancies in the class so assigned to it. 65 v. 188, § 2. S. & S. 106.

§ 3738. Term of office of trustees—How vacancies filled—

When the classes of trustees are formed, as provided in the preceding section, the term of office of one of the trustees in each of the classes, to be selected by lot in open session of the board of trustees, shall expire each year, and the persons thereafter elected as trustees shall act as such for a term of years equal in number to the number of trustees in any class, except as hereinafter provided; but the term of office of a trustee shall not expire during any meeting of the board which does not continue for

more than two weeks; and vacancies which occur in any class of trustees otherwise than by the expiration of term of office shall be filled only for the remainder of the term. 65 v. 188, § 3; 70 v. 157, § 1. S. & S. 107.

§ 3739. Trustees at large—

If the number of the conferences or other religious bodies patronizing any such university or college, the board of trustees of which has been divided into classes as hereinbefore provided, be increased to not exceeding six, the board of trustees shall be enlarged to the extent of one additional class of trustees for each of such additional conferences or other religious bodies, such additional classes to have in each a number of trustees equal to the number in any one of the former classes; and each of such additional conferences or other religious bodies may elect, as members of the board, the number in its class, one for one year, one for two years, and one for three years, and so on to the extent of the number; and each of such additional conferences or other religious bodies may fill any vacancy in its class. And such board of trustees composed according to the foregoing provisions, and the provisions of section *thirty-seven hundred and forty-seven* of this chapter, without regard to the number of members so composing it, may increase its own numbers by the election of trustees at large, not exceeding the number of conferences or other religious bodies co-operating with or patronizing such university or college, and may divide such trustees at large into classes, at its discretion. 89 O. L. 119.

§ 3740. When the number in a class is to be reduced—

If the number of such patronizing conferences or other religious bodies at any time exceed six, the representation of each shall be reduced by lot, in open session of the board of trustees, to a class of three trustees, if they exceed that number, who shall thereafter be elected to serve as trustees for the term of six years, and in that case the term of office of one trustee in each class shall expire every second year. 65 v. 188, § 5. S. & S. 107.

§ 3741. A conference may become a patron by consent of other bodies—

Any conference or other religious body, not patronizing any

particular university or college, may become such patronizing conference or religious body, by and with the consent of the conferences or other religious bodies at the time patronizing such university or college. 65 v. 188, § 6; S. & S. 107.

§ 3742. Patronizing bodies may appoint visitors—

Each conference or other religious body patronizing any particular university or college may, annually, appoint two visitors, and the board of trustees of a college or university may provide, at the time of its organization, by resolution adopted and entered on its records, for the appointment of two visitors by each conference or other religious body patronizing such college or university; and such visitors shall attend the meetings of the board of trustees of such university or college, and, with the trustees, constitute a joint board for the appointment and removal of all officers, professors and instructors of the university or college. 73 v. 163, § 7.

§ 3743. When the right of representation shall cease—

If a conference or other religious body patronizing any university or college, and having a representation in its board of trustees, cease to exist, or cease to patronize such university or college, the right of such conference or other religious body to such representation shall cease, and its board of trustees shall be thereby and to that extent reduced in numbers. 65 v. 188, § 8; 73 v. 163; S. & S. 107.

§ 3744. What action the board must first take—

Before a conference or other religious body not represented in the board of trustees of any university or college shall be entitled to be represented therein, and before any conference or other religious body represented therein shall be deprived of such representation as provided in the preceding section, the board shall declare, and cause to be entered in the record of its proceedings, that the conditions and contingencies hereinbefore provided for in that behalf have taken place. 65 v. 188, § 9; S. & S. 107.

§ 3745. Quorum—how constituted—

Eleven trustees shall constitute a quorum of the board of any university or college, whatever the number of trustees constituting the board is or may become, if the number is more than

twenty; and if the number is twenty or less, a majority thereof shall constitute a quorum. 65 v. 188, § 10; S. & S. 108.

§ 3746. Certain corporations may have benefit of subsequent provisions—

The board of trustees of any university or college which has accepted or hereafter accepts the provisions of the ten preceding sections, may accept the provisions of the three succeeding sections by resolution adopted at any regular meeting of the board, and entered upon the record of its proceedings, and thereafter the board, and the university or college, shall be subject to [the] provisions thereof. 69 v. 71, § 1.

§ 3747. Alumni may elect trustees and visitors—

After such acceptance by the board of any university or college, the alumni thereof (composing the alumna association thereof) may elect as members of the board of trustees of such college or university, members of such alumna association, in numbers equaling the numbers of the conferences co-operating with or patronizing such university or college, and may divide such alumna trustees into classes, and perpetuate the same; and such alumni may, at the same time, elect as visitors members of their association equaling in numbers one-half of the numbers of the conferences or other religious bodies co-operating with or patronizing such university or college, and such visitors shall have the same powers and duties as visitors appointed by any conference or other religious body aforesaid; provided, that when women are members of the alumna association so electing, they shall be eligible as visitors; provided, further, that the board of trustees shall be judge of the validity of the election and the returns thereof, of trustees and visitors elected under this section. 89 O. L. 119.

§ 3748. Conduct of election—

The election of trustees and visitors by the alumni shall be by ballot, and held each year, beginning the year after such acceptance, on the secular day next before the day of commencement of such university or college, at such place in a building on its grounds as may be designated by the president of the alumna association by written notice posted the day before the election in at least two public places on such grounds; and the polls shall be

opened at the hour named in said notice, which shall not be later than three o'clock P. M., and shall be kept open for two hours thereafter. The election shall be conducted by three judges and two clerks, who shall be members of said association, and be chosen by the members present at the place of voting at the time for opening the polls, and they shall certify to the board of trustees the result of such election, with a list of the members voting thereat; each ballot shall contain the names of the persons voted for, the office which each is to fill and a designation of the term for which he is to serve. At such election all members of the alumni association of such university or college shall be entitled to vote, and members not in attendance may exercise their right by sending ballots conformable to the foregoing provisions, with their names thereon indorsed, and addressed under seal to the president of such association. 89 O. L. 119.

§ 3749. Returns of the election, and certificates—

After the polls are closed the result shall be ascertained and certified to by the judges and clerks, and the person or persons, not exceeding the number to be elected as trustees, having received the highest number of votes for trustee or trustees, shall be declared elected as trustee or trustees as designated on the ballot, and the two persons who receive the highest number of votes for visitors shall be declared elected, but their terms of office shall not begin until after the final adjournment of the regular meeting of the trustees for that year; if any two or more persons receive an equal number of votes for the same office of trustee or visitor, one of them, as may be determined by lot by the judges, in the presence of all the electors who may wish to be present, shall be the trustee or visitor, and shall be so declared; and duplicate certificates of election shall be signed by the judges and clerks, and delivered by them, one to each of the persons elected, and the other, with the poll-books duly certified by the judges and clerks, to the secretary of the board of trustees of the university or college, the next day after the election, which certificate he shall enter of record in the book containing the proceedings of the board of trustees. 69 v. 71, § 3.

§ 3750. Endowment fund corporations—

The trustees of a corporation incorporated for the purpose of creating a fund, the income of which is to be applied to the promotion of education, may receive subscriptions for membership in the corporation, and they, or a majority of them, by giving ten days' notice, by publication in the county where the corporation is located, may call a meeting of members to adopt by-laws, and elect not more than nine directors; each member shall have a vote for every amount by him subscribed equal to that in the articles of incorporation specified as necessary for membership, which may be cast in person or by proxy, but at no subsequent meeting may a member vote for or be eligible as a director who is in arrears to the corporation; and the trustees shall control the funds and disburse the income of the corporation as may be provided by its by-laws. 69 v. 173, §§ 1, 2, 3, 4, 5.

§ 3751. How certain board may be constituted and governed—

The board of trustees of any university, college, or other institution of learning, incorporated, and acting under the patronage of one annual conference or other religious body of any religious denomination, may accept the provisions of this and the succeeding section, by resolution adopted at any meeting of the board, and entered upon the record or journal of its proceedings; and after such acceptance the board shall be organized, constituted, regulated, and perpetuated as therein provided; but no right acquired by any such board, university, or other institution of learning, under its charter, or any law of this state, shall in any way be impaired or affected thereby. 69 v. 180, § 1.

§ 3751a. Increase in number of trustees of certain corporations—

The board of trustees of any university or college heretofore incorporated, and now under the patronage of one annual conference or synod or other religious body of any religious denomination, may increase the number of its trustees, not exceeding six; said additional trustees to be nominated by the collegiate alumni of such university or college from the collegiate alumni of three years' standing, for appointment or election by such patronizing conference or synod, under such regulations as may be prescribed by such board of trustees; provided, that the board of

trustees of such university or college shall so determine to increase the number of its trustees and adopt such regulations for their nomination, by resolution adopted at any regular meeting of such board and duly entered on the record of its proceedings; and, provided further, that such patronizing or governing conference or synod shall consent to such increase of said board of trustees and the rules and regulations for the nomination of the same. And after such board of trustees is so increased by the election of any additional trustees, not exceeding six, the board of trustees shall in all respects be organized, constituted, regulated and perpetuated pursuant to and under the provisions of the charter and said provisions; but no rights acquired by any such board or any such university or college, under its charter or any law of this state, shall in any way be affected or impaired thereby. 91 O. L. 155.

§ 3751b. Incorporation of colleges under ecclesiastical patronage; what articles shall contain—

A corporation may be formed for the promotion of academic, collegiate or university education, under religious influences, and is hereby authorized and empowered to set forth in its articles, or certificate of corporation, as a part of the same, the name of the religious sect, association or denomination with which it proposes to be connected, and it is further authorized and empowered to grant any ecclesiastical body of such religious sect, association or denomination, whether the same be a conference, association, presbytery, synod, general assembly, convocation or otherwise, the right to appoint its trustees or directors, or any number thereof; and it is further authorized and empowered to set forth in its articles or certificate of corporation, such other rights as to the administration of the purpose for which it is organized, and not inconsistent with the laws of this state or of the United States, as said incorporation may desire to confer upon said ecclesiastical body of such religious sect, association or denomination and the said ecclesiastical body of such religious sect, association or denomination shall possess and exercise all rights and powers so set forth in said articles, or certificate of corporation. 94 O. L. 331.

§ 3751c. Existing corporations may avail themselves of provisions of act; how—Copy of acceptance of provision to be filed with secretary of state.

Any corporation formed for the promotion of academic, collegiate or university education, under religious influences, which has been incorporated under the laws of this state, whether by special act of the legislature or otherwise, may avail itself of the provisions of the preceding section, as a part of its articles or certificate of incorporation, and may confer on any ecclesiastical body of such religious sect, association or denomination, as it is now, or proposes to be connected with, whether the same be a conference, association, presbytery, synod, general assembly, convocation or otherwise, any or all of the rights, powers or privileges provided by the preceding section to be conferred on corporations hereafter organized, and may accept the provisions of such preceding section by a vote of the majority of the trustees of such corporation at any regular meeting; and when so accepted, a copy of said acceptance, certified by the secretary or clerk of its board of trustees or directors, shall be sent to the ecclesiastical body with which it is now or proposes to be connected; if such ecclesiastical body agree to accept the powers proposed to be conferred upon it, it shall certify its approval upon such certified copy sent to it, and the same shall thereupon be filed in the office of the secretary of state; and, when so filed, the same shall become and be a part of the charter of said corporation; and said ecclesiastical body of such religious sect, association or denomination, whether the same be a conference, association, presbytery, synod, general assembly, convocation or otherwise, shall possess and exercise all the rights and powers so set forth in said articles or certificate of corporation. 94 O. L. 331.

§ 3752. Classes and election of trustees—Term—Vacancies—Increase—

After such acceptance, the board shall certify the same to the patronizing conference or other religious body having the right to elect or appoint trustees or such university or other institution of learning, at the next meeting of such conference or other religious body; and thereafter the board shall consist of twenty-one trustees elected or appointed, and the president of such university or other institution of learning, who shall be *ex-officio* a member of the board; such elected or appointed trustees shall be

divided into three classes, of seven members each. At the first election or appointment after such acceptance, one of such classes shall be elected or appointed for one year, one for two years and one for three years, and in all subsequent elections or appointments each of the classes of trustees shall be elected or appointed for three years, but no term of office of any such trustee shall expire during any meeting of the board which does not continue more than two weeks. Ten members of the board shall constitute a quorum, and all vacancies which occur in any class of trustees otherwise than by expiration of the term of office, shall be filled only for the remainder of the term; provided, that any such university or other institution of learning, having heretofore accepted the provisions of original sections *thirty-seven hundred and fifty-one* and *thirty-seven hundred and fifty-two* may increase its board of trustees by electing or appointing two additional members in each of the classes of trustees herein provided for. 85 O. L. 140.

§ 3753. Assessments may be made against stockholders—

The proportion that each stockholder of any college, academy, university, seminary, or other institution for the promotion of education, shall be required to pay to meet the debts and liabilities of the corporation, may be determined and collected in the manner provided by the three succeeding sections. 58 v. 20, § 1; S. & S. 108.

§ 3754. Meeting of the stockholders and notice thereof —

The trustees of any such corporation desiring to avail themselves of such provisions shall call a meeting of the stockholders for the purpose of determining what amount of the indebtedness of the corporation shall be paid by each stockholder; and they shall give thirty days' notice to the stockholders, in writing, or by publication in some newspaper of general circulation in the county where the corporation is located, of the time, place and purpose of the meeting, at which the trustees shall submit a detailed statement showing the assets and indebtedness of the corporation. 58 v. 20, §§ 2, 3; S. & S. 108.

§ 3755. Meeting may fix amount of assessment—

A majority in interest of the stockholders present at such meeting may determine what amount of the indebtedness of the

corporation shall be paid by each stockholder, and fix the time or times, and the mode, for the payment of the amount of money assessed against each stockholder; but these provisions shall not interfere with or abridge the right of any creditor of the corporation to institute any proceedings authorized by law to enforce the liability of stockholders. 58 v. 20, § 4; S. & S. 108.

§ 3756. How much may be assessed, etc.—

The assessment shall be pro rata upon the stock subscribed or otherwise acquired by each stockholder, and in no case shall exceed the amount for which each stockholder is or may be liable by law; and a stockholder who fails to pay, as required by the assessment, the amount so assessed against him, shall be liable in a civil action, to be brought in the name of the corporation, for the recovery thereof, as in other cases of indebtedness. 58 v. 20, §§ 5, 6; S. & S. 108, 109.

§ 3757. The board of military academies—How constituted, etc.—

The academic board of an institution incorporated for military and polytechnical education shall consist of the superintendent of the institution, the commandant of cadets, and the professors, and may make and enforce rules and regulations for the government of cadets; but such rules and regulations must be first submitted to and approved by the governor of the state. 64 v. 239, §§ 1, 2; S. & S. 109.

§ 3758. Board of visitors—How constituted—

The board of visitors of such institution shall consist of the governor, who shall be *ex officio* a member and the president of the board, of two other persons to be named by the governor, and such other persons as the superintendent of the institution may appoint. 64 v. 239, § 3; S. & S. 110.

§ 3759. Duties of board of visitors—

The board of visitors shall meet annually at the institution, on the first day of the annual commencement exercises, and examine into the condition of the classes, quarters, and commons, and the discipline, drill, records of standing in study, and conduct of the cadets, and shall report on the same to the legislature at its next

annual session; but the board of visitors, or any member thereof, may visit and inspect the institution at any time. 64 v. 239, § 3; S. & S. 110.

§ 3760. How the term of office of trustees and visitors may be fixed—

At a regular meeting for the election of directors or trustees of any college or other institution of learning, the authorized voters may determine, by vote, whether the election of directors or trustees shall be held annually, if the term of their election is for a longer period than one year, and also what proportion of the entire board shall be elected annually; at the first election held under the provisions of this section the voters shall designate upon their ballots who shall serve for one year, who for two years, and who for three years; and vacancies caused by expiration of term of office shall be filled by election annually thereafter. 70 v. 125, § 1.

§ 3761. Certain corporations may change location—

The trustees of colleges and other institutions of learning not endowed by voluntary contributions, which have been established under special acts of incorporation, and which by the provisions of such acts are located at particular places, may change the location thereof to such other places as they may deem proper, and erect and maintain academies and other schools auxiliary thereto. 70 v. 248, § 1.

§ 3762. Sale and distribution of the property of certain corporations—

The trustees of any university, college, or other institution of learning, incorporated by the authority of this state under special charter, owned in shares or stock subscribed or taken, may dispose of its property at public sale, upon such terms as to payment as the stockholders thereof, by a vote of three-fourths of the shares of stock in the institution, may direct, and give public notice of the same, by publication for six consecutive weeks in some newspaper published in the county where the institution is located, if one is published therein, and if not, then in some newspaper published in this state, and of general circulation in such county, which notice shall contain a full statement of the terms, time and place of sale, and the action of the trustees as

aforesaid; and the trustees may close up the corporate existence of such institution, and make an equitable division and distribution of the proceeds of the sale among all the holders of shares or stock, after the payment of the just debts of the corporation. 67 v. 24, § 1.

§ 3762a. Certain colleges whose articles of incorporation are not on file may file same and amend—

The trustees of any university, college, or institution of learning incorporated by the authority of this state, or under the general corporation laws thereof, owned in shares of stock subscribed and paid up in full, by a majority of the owners of such stock, for the sole purpose of promoting education, religion, and morality, or the fine arts, exclusively among males or females, may, on the written petition of the owners of a majority of such stock filed before them, or on the vote of the owners of the majority of such shares of paid up stock at any general meeting of the stockholders called for such purpose, after thirty days' notice published in some newspaper published and of general circulation in the county, by the board of trustees, may change the name and enlarge the purposes and objects of any such university, college or institution, by amendments to its charter, approved by the owners of the majority of such stock for the change of the name and the enlargement of the purpose and object of such university, college, or institution of learning, so that all the educational rights and privileges thereof may be bestowed in the co-equal and co-ordinate education of both sexes. When such amendment is adopted and the original articles of incorporation of said corporation have not been filed and recorded in the office of the secretary of state, a copy of such amendment and a copy of the original articles of incorporation of said corporation, with a certificate to each of them thereto affixed, signed by the president and secretary of said corporation, and sealed with the corporate seal, if any there be, stating the fact and date of the adoption of such amendment, and that such copy of said amendment and that such copy of said original articles of incorporation of said corporation are and is a true copy of the originals, shall be recorded in the office of the secretary of state, and when so recorded, and not until then, said amendment shall become and be in law the sole articles of incorporation of said corporation; and

all the property, real and personal, and the title thereunto, and all the rights and credits, shares of stock, and rights of stockholders, corporate franchises, and all endowment fund or funds, or gift or bequest, or legacies or mortgage securities and promissory notes, and rights of every kind belonging to, vested in, or claimed, or possessed by the said original corporation, shall, by said amendment, pass to, be assigned and transferred and vested in and held, enjoyed and exercised by the said corporation named, created, and organized by said amendment for the promotion of all the objects and purposes of its creation and organization. For recording such amendments and copies of such original articles of incorporation, and for furnishing a certified copy or copies thereof, the secretary of state shall receive a fee of twenty cents per hundred words, to be in no case less than five dollars. 85 O. L. 270.

§ 3762b. Certain colleges authorized to change name and enlarge purposes by amendment to charter; proceedings and effect—Fee of secretary of state—

That the board of trustees of any university, college, or institution of learning, incorporated by the authority of this state, or under the general corporation laws thereof, for the sole purpose of promoting education, religion, and morality, or the fine arts, may, at any regular or special meeting of such board of trustees, called for such purpose, after thirty days' actual notice to each and all of such trustees, change the name and enlarge the purposes and objects of any such university, college, or institution of learning, by amendment to its charter, approved by a majority of such board of trustees, at such regular or special meeting, so called and so notified, for the change of such name and the enlargement of the purposes and objects of such university, college, or institution of learning. When such amendment is so adopted by the board of trustees of any university, college, or institution of learning, already incorporated by the authority of this state, or under the general corporation laws thereof, a copy thereof, with a certificate thereto affixed, signed by the president and secretary of such board of trustees, and sealed with the corporate seal, if any there be, stating the fact and date of such amendment, and that such copy is a true copy of the original amendment, shall be filed and recorded in the office of the secre-

tary of state, and when so filed and recorded, and not until then, said amendment shall become and be in law an integral part of the articles of incorporation of said corporation, and all the property, real and personal, the title thereto, and all the rights and credits, corporate powers and franchises, and all endowment fund or funds, gifts and bequests, legacies, mortgage securities and promissory notes, and all powers, rights and privileges of every kind belonging to, vested in, claimed or possessed by said original corporation shall, by said amendment, pass to, be assigned, transferred and vested in, and held, enjoyed and exercised by the said corporation named, created and organized by said amendment for the promotion of all [the] objects of its creation and organization. And said new corporation shall be liable for and perform all the lawful obligations, contracts and undertakings of said original corporation. For recording such amendment and furnishing a certified copy or copies thereof, the secretary of state shall receive a fee of twenty cents per hundred words, to be in no case less than five dollars. 87 O. L. 8.

**§,3763. Under what restrictions medical colleges and teachers may receive bodies for dissection—
Penalty for having unauthorized body in possession—**

All superintendents of city hospitals, directors or superintendents of city and county infirmaries, directors or superintendents of work-houses, directors or superintendents of asylums for the insane, or other charitable institutions founded and supported in whole or in part at public expense, the directors or warden of the penitentiary, township trustees, sheriffs, or coroners, in possession of bodies not claimed or identified, or which must be buried at the expense of the county or township, shall, before or after burial by such said superintendent, director, or other officer, on the written application of the professor of anatomy in any college which, by its charter, is empowered to teach anatomy, the president of any county medical society, deliver to such said professor or president, for the purpose of medical or surgical study or dissection, the body of any person who has died in either of said institutions from any disease, not infectious, if such body has not been requested for interment by any person at his own expense; if the body of any deceased person so delivered be subsequently claimed, in writing, by any relative or other person for

private interment, at his own expense, it shall be given up to such claimant; after such bodies shall have been subjected to such medical or surgical examination or dissection, the remains thereof shall be interred in some suitable place at the expense of the party or parties in whose keeping said corpse has been placed. In all cases it shall be the duty of the officer having such body under his control to notify, or cause to be notified in writing, the relatives or friends of such deceased person; and any superintendent, coroner, or infirmary director, sheriff, or township trustee, failing or refusing to deliver such bodies when applied for, as herein provided, or who shall charge, receive, or accept money or other valuable consideration for the same, shall be fined in any sum not exceeding one hundred dollars, and not less than twenty-five dollars, or be imprisoned in the county jail not exceeding six months; provided, however, that in no case shall the body of any such deceased person be delivered until twenty-four hours after death. The bodies of strangers or travelers who die in any of the institutions herein named shall not be delivered for the purpose of dissection, except such stranger or traveler belong to that class commonly known as tramps; and all bodies delivered as herein provided shall be used for medical, surgical, and anatomical study, only, and within this state, and the possession of the body of any deceased person, for the above purpose, and not authorized by this section, and the detention of the body of any deceased person, claimed by relatives or friends for interment at their expense, shall also be unlawful, and the person so detaining said body unlawfully shall be fined in any sum not exceeding one hundred dollars, nor less than twenty-five dollars, or be imprisoned in the county jail not exceeding six months. 78 O. L. 33.

§ 3764. Penalty for having unlawful possession of corpse—

Any person, association, or company, having unlawful possession of the body of any deceased person, shall be jointly and severally liable with any and all other persons, associations, and companies that had or have had unlawful possession of such corpse, in any sum not less than five hundred dollars and not more than five thousand dollars, to be recovered at the suit of the personal representative of the deceased, in any court of competent jurisdiction, for the benefit of the next of kin of deceased.

This section does not apply to cemetery associations or their trustees; nor does it relate to remains of persons long buried and decomposed. *Carter, Admx., v. Zanesville*, 59 Ohio St. 170.

§§ 3765, 3766—

[Repealed. 77 O. L. 85.]

§ 3767—

An association incorporated for the purpose of receiving gifts, devises, or trust funds, to erect, establish, or maintain an academy in any department of fine arts or a gallery for the exhibition of paintings, or sculpture or works of art, or a museum of natural or other curiosities, or specimens of art or nature promotive of knowledge, or a law or other library, or courses of lectures upon science, art, philosophy, natural history, or law, and to open the same to the public on reasonable terms, or an industrial training school, or a mechanics' institute for advancing the best interests of mechanics, manufacturers, and artisans, by the more general diffusion of useful knowledge in those classes of the community, or homes for indigent and aged widows and unmarried women, and whose directors or trustees may be of either sex, may, in its articles of incorporation, prescribe the tenure of office of the trustees or directors, the mode of appointing or electing successors, the administration and management of the property, and trust and other funds of the corporation, and such other organic rules as may be deemed expedient or acceptable to donors, which shall be and remain the permanent organic law of the corporation. 84 O. L. 31.

Under what circumstances such a corporation is "an institution of purely public charity" within the tax laws. *Cleveland Library Ass'n v. Pelton*, *Treas.*, 36 Ohio St. 253. But such part of its building as is rented, or otherwise used with a view to profit, is not exempt from taxation.

§ 3768. May add to the objects of the corporation—Acceptance of statutory provisions—

Such corporations may by certificate, duly acknowledged by the trustees or directors, and filed in the office of the secretary of state, add to the original objects and purposes of the corporation any of the several objects and purposes mentioned in the preceding section which were not provided for by the articles of incorporation, and any such corporation heretofore incorpo-

rated under the laws of the state may by certificate, reciting the organic rules adopted by such corporation as its permanent organic law, and duly acknowledged by the trustees or directors, and lodged in the office of the secretary of state, accept the provisions of the preceding section. 83 v. 41.

§ 3769. Accounts of receipts and disbursements—

The officers of the corporation charged or intrusted with the receipts and disbursements of its funds or property shall make and keep like accurate and detailed accounts of such funds, and the receipts and disbursements thereof, as are required to be kept by the fund commissioners of the state; the trustees shall, on or before the third Monday in January of each year, file with the clerk of the court of common pleas of the county in which the corporation is located an abstract of their account, which abstract shall correspond in date, amount, person to whom paid, and from whom received, and on what account, with the voucher taken or given on account of such receipts and disbursements; they shall at the same time, annually, file in such clerk's office a report of the names of the donors, the kind, amount, or value of the gifts of each, and a brief statement of the conditions and purposes of the gifts; and the filing of such abstract and report, and the supplying of any omission in either, may be enforced by order and attachment of the court of common pleas of the proper county, against the trustees, on motion of any respectable citizen. 75 v. 135, § 4.

§ 3770. Trustees ineligible to other office—

No trustee shall be eligible to any office or agency of the corporation to which any salary or emolument is attached, nor shall the trustees be allowed any salary, emoluments, or perquisites, except the right of free ingress to the grounds, rooms, and buildings of the corporation. 75 v. 135, § 5.

§ 3771. Attorney-general may, by action, enforce duties of officers—

On application to the attorney-general of five citizens of the proper county, in writing, verified by the oath or affirmation of one of them, setting forth specific charges against any of the fiscal or other agents or trustees of such corporation, involving a breach of trust or duty, he shall give notice thereof to the trus-

tees or agents complained of, and inquire into the truth of such charges, and for this purpose he may receive affidavits; or enforce, by process from the court of common pleas of Franklin county, the production of papers, and the attendance of witnesses before him; and if, on testimony or other evidence, he believes the charges, or any of them to be true, he shall proceed, by action in that court, in the name of the state, against the delinquent trustee or trustees, fiscal agent or agents, and, on the hearing, the court may direct the performance of any duty, or the removal of all or any of the agents or trustees, and decree such other and further relief as may be equitable. 75 v. 135, § 6.

§ 3771a. How number of trustees of certain colleges increased—

The board of trustees of any university or college heretofore incorporated, but not under the patronage of conferences or other ecclesiastical bodies of any religious denomination, as described in section *thirty-seven hundred and thirty-six*, may increase the number of such trustees to twenty-four, exclusive of the president, or a less number, and may divide said trustees into six classes, each class to serve six years, and one class to be chosen each year for said term; but one trustee of each class may be chosen by the votes of the alumni of such university or college, if the board of trustees shall so provide by by-law, in which case it shall also be the duty of the board of trustees to provide, by such by-laws, a method of nominating and electing such appointee of the alumni. The president of such university or college shall, *ex-officio*, be a trustee perpetually, and shall not be included in the classes going out in rotation. If it shall be necessary, in the first enlargement of the board of trustees, under this section, to distribute new members to the several classes, whose terms shall expire by rotation, the distribution may be made in such manner as the board may direct, so that no trustee shall be elected for a longer term than six years. 87 O. L. 187.

RELIGIOUS AND OTHER SOCIETIES.

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§ 3772. When language of church service may be changed—

Any religious society incorporated under a general or special law of this state, and which act of incorporation prescribes that the public religious services of such society shall be conducted in any other than the English language, may [at] any time, by a vote of a majority of its adult members, in good and regular standing, who speak such prescribed language, decide whether its public religious services may, at any time, be conducted in any other than such prescribed language. 65 v. 163, § 1; S. & S. 162.

§ 3773. When and how religious or educational corporation may sell cemetery grounds—

When a religious or educational corporation or society holds any lands within the limits of any city or village which has [have] been used as a cemetery, and interments in which have been prohibited by the ordinances of such municipal corporation, the trustees, wardens, vestry, or other officers intrusted with the management of the property of such corporation or society, may file a petition in the court of common pleas of the county where such property is situated, setting forth therein a description of the property, the existence of such ordinance, and the names of all persons holding burial privileges in such cemetery, so far as known to them, and if such privileges are held by persons whose names are unknown to them, the facts as to same, shall also be stated, and asking that the value, if any, of such burial privileges shall be determined by the court, and [the] direction of the court as to the removal of the bodies interred in such cemetery to other cemeteries, and for an order to sell such property free from such burial privileges. Notice of the filing of such petition shall be given by publication in some newspaper, printed and of general circulation in the county where it is filed, for four consecutive weeks, setting forth the object and prayer thereof; and that any persons claiming an interest in the subject-matter of the petition, or burial privileges in such cemetery, may appear and file an answer therein, within six weeks from the date of the first publication of such notice, and after which, such case shall stand for hearing; and if, upon final hearing of the case, it shall be made to appear that such cemetery is as above described, the court shall proceed, with or without the aid of a jury, as the parties appearing may elect, and hear and determine the value, if any, of such burial privileges, and order that the corporation or society shall pay any amount so ascertained to the holders of such privilege, and the court may order said cemetery property sold, free from such burial privilege, and may direct a subdivision of same into lots for the purpose of sale, and shall direct the application of the money arising therefrom, to such uses of such corporation or society, for pious or educational purposes, as the trustees, wardens, vestry, or other officers conceive to be most for the interest of the corporation or society to which the ceme-

tery so sold belonged; but such sale shall not be made until the bodies interred therein are removed to other cemeteries, as directed by the court on the final hearing of the case; provided, that any holder of such burial privilege who may not have appeared in such proceeding, and who has not waived his right to receive compensation for same, may assert his right to receive from such society or corporation, compensation therefor, within five years after the final entry to such proceedings. 87 O. L. 189.

(§ 3773-1.) Sec. 1. Conveyance of public burying ground from religious or benevolent society to townships using same—

Whenever any public burying ground is located on or near a township line, and is used by the people of two or more townships for burying purposes, the title of which is vested in any religious or benevolent society, such religious or benevolent society, or the trustees thereof, may convey the same to the trustees of such townships so using the same, and their successors, in office, jointly; and the trustees of such townships shall accept the same and shall jointly take possession of the same, and take care and keep the same in repair, as required as to public burial grounds in and belonging to the respective townships, and each township shall bear an equal share of the expenses thereof; and the trustees of each township shall levy needful taxes in that behalf, not exceeding in any one year more than one-fourth of one per cent. 90 O. L. 151.

§ 3774. When trustees may apply to court for order to sell property—

When the title of any real estate is vested in trustees for the use of churches, or congregations of churches, and, owing to the peculiar situation of such real estate, or the nature of the trust or conditions upon which it is held, it has not been for twenty years claimed by or appropriated to the use of churches or congregations, as originally contemplated, and such trustees are in doubt as to what disposition to make of such unappropriated church property, and when any public church-site and meeting-house has been abandoned by the public as a place of worship, and the trustees invested with the title of such property have sold the same, and are in doubt as to what disposition to make of the

proceeds thereof, such trustees may file a petition in the court of common pleas of the county where the property is situate, setting forth all the facts in the case, and asking the direction of the court as to the proper disposition of such unappropriated property or proceeds. 65 v. 84, § 1; S. & S. 164.

See *Wiswell v. First Cong. Church*, 14 Ohio St. 31; *Mannix v. Purcell*, 46 Ohio St. 102; and *In re Shoup et al., Trustees*, 16 B. 71 (C. P.).

Sale without authority from court is void. *S. S. Ass'n. v. Espy*, 17 C. C. 524.

§ 3775. Notice by publication, and judgment—

Notice of the filing of such petition shall be given by publication in some newspaper printed and of general circulation in the county where it is filed, for four consecutive weeks, setting forth the object and prayer thereof, and that any person, church, or congregation, claiming an interest in the subject-matter of such petition, may appear and file an answer therein; and the court, on final hearing of the case, shall make such order or decree therein as will best secure the rights of the churches or congregations or persons having an interest therein, and as will best promote the interests of religion, having regard, as near as may be, to the nature and terms of the original trust or purpose with which such property or proceeds is charged, and shall tax the costs of the proceeding as justice and equity require. 65 v. 84, § 2; S. & S. 165.

§ 3776. When trustees may convey church sites to congregation—Church site subject to payment of judgment—

When any real estate has been purchased by or conveyed to trustees for the use of churches or congregations, as sites for meeting-houses to be erected thereon, and such churches or congregations have erected houses of worship thereon, but no power is possessed by such trustees to convey such real estate to such congregations, or to the trustees thereof, such trustees may convey such improved sites to the trustees of such congregations; provided, however, that where an incorporated religious congregation, society, association, sect or denomination use or occupy, as and for a place of worship, real estate which is held in trust for such religious congregation, society, association, sect, or denomination, or the members thereof, as and for a place of worship,

and a judgment has been, or may be, recovered against such incorporation, the said real estate, together with such edifice and improvements thereon, shall, by a civil action for that purpose, be subjected to the payment of such judgment and costs. 80 O. L. 51.

(§ 3776-1.) Sec. 1. Transfer of certain church property—

Any ecclesiastical society incorporated under the laws of this state connected with a church of Christ in this state, may, by a three-fourths vote of its adult members present and voting at a meeting warned and held for that purpose, assign, transfer and convey to the church with which it is connected, and which is incorporated under the laws of this state, all the property and estate, real and personal, and trust funds of said society to be held by said corporation under the trusts and for the same uses upon which the same had heretofore been held by such society, and the society, committee or trustees are fully authorized to make, pursuant to such vote, any and all conveyances necessary to complete such assignment and transfer; but, before the same shall be effectual a certificate of the fact of such assignment and transfer shall be filed in the office of the secretary of state, and in the office of the clerk of the county in which the property is located. 88 O. L. 298.

§ 3777. Consolidation of religious corporations—

When two or more religious societies, churches, or associations, recognizing the same ecclesiastical jurisdiction, form of faith, government, order, and discipline, and incorporated by or under any law of this state, desire to be consolidated or united as a single corporation, the elders, trustees, deacons, directors, or other known and legal representatives of such societies, churches, or associations, may enter into an agreement for such union or consolidation, and prescribe the terms and conditions thereof, the corporate name of such united society, church, or association, the time and place for the first meeting of the new corporation, the number of members of each separate branch or organization who shall be chosen as directors, trustees, elders or other officers for the new corporation, to succeed to the rights, trusts, duties and obligations of those officers who, in the separate organizations, held in trust the estate, real and personal, of such separate

churches, societies, or associations, with such other estates as they may deem necessary to complete the new corporation; but an agreement so made shall not be valid until it has been submitted to a separate meeting of the members of each organization, of which due and full notice has been given, according to the form and usage for calling church, congregation, or society meetings, and ratified by a two-thirds vote of all present at such meeting, in person or by proxy, and entitled to vote according to the laws, regulations, or usages of such church, society, or corporation. 67 v. 30, § 1.

§ 3778. Record of proceedings to be certified, etc.—

When the agreement has been ratified by each church, society, or association, which is a party to the proposed united organization, the clerk or secretary of each meeting shall certify the record of the proceedings thereof, and deliver the same to the clerk or secretary of the first meeting of the united churches, societies, or organizations, as hereinbefore provided, and as specified in the terms of agreement. 67 v. 30, § 2.

§ 3779. Articles of incorporation, and filing of same—

If, at the first meeting of the united corporations, the proceedings and acts of the several churches, societies, and parties thereto are submitted to and approved by the meeting, and a board of trustees, directors, or other officers are chosen in accordance with the terms of agreement, the clerk or secretary of the meeting shall certify such approved agreement or terms of union, and file the same in the office of the secretary of state, whereupon the several churches, societies, or associations, parties thereto, shall be deemed and taken to be one corporation, possessing within this state all the rights, privileges, and franchises, and subject to all the restrictions, disabilities, and duties, of such new corporation. 67 v. 30, § 3.

§ 3780. Property passes to new corporation—

The new corporation, with its officers and chosen representatives, shall succeed to, and be invested with, all and singular, the right, title, and interest in and to every species of property, real, personal, or mixed, and all and singular the rights, privileges, and franchises of each of the churches, societies, or associations parties to the agreement, without any other act, conveyance,

or transfer; and such new corporation shall hold and enjoy the same, with all the rights pertaining to such property, franchises, and trusts, and shall be subject to all the debts, liabilities, and obligations, in the same manner and to the same extent as any or either of the churches or societies parties to the new corporation. 67 v. 30, § 4.

§ 3781. Transfer of property after union of corporations—

When any two or more religious societies, denominations, or ecclesiastical corporations in this state hereafter unanimously form a union, or which have heretofore unanimously formed a union, and become united or consolidated under and by virtue of any rules and regulations of such societies, denominations, or corporations, or laws of this state, the trustees, deacons, directors, or other proper officers of such new society, denomination, or corporation may, at the request of a majority of the members of either of such societies, denominations, or corporations, petition the court of common pleas of the proper county, setting forth the fact of such union, and the court may, in its discretion, make an order requiring such officers, at the time of such union, to convey to such new organization the real estate owned and held by the parties to the union, as the court may direct; and if any of such officers refuse or neglect to obey such order, the decree of the court shall serve as such conveyance; but such order shall in no case be inconsistent with the original terms upon which such real estate became vested in or intrusted to the parties to the union; and in all cases the grantors of such real estate to such parties, or their heirs, shall be made parties to the petition, and such grantors or their heirs who make no defense shall not be subject to costs. 73 v. 225, § 1.

§ 3782. Notice of application therefor—

Notice of the pendency of such petition shall be given by publication in a newspaper published in the county where the petition is filed, for four consecutive weeks, setting forth the object and prayer of the petition, and if no newspaper is printed in such county, publication shall be made in the newspaper published nearest to such county. 73 v. 225, § 2.

§ 3783. Associations for holding donations and bequests—

An association incorporated for the purpose of receiving and

holding donations and bequests, and funds arising from other sources, and disbursing the interest and income arising therefrom as in this section provided, shall hold all such principal sums as a permanent fund; and the interest arising from such fund, and the annual income arising from all personal and real property held by such association, shall be applied and distributed annually as follows :

First. To the payment of the necessary expenses of such association.

Second. The balance shall be paid to the board of stewards, or any officer that may be designated by any conference, synod, assembly, or association within the bounds of which the principal office is located at the time of such organization, to be distributed by the board of stewards or such officer annually, to such persons as may be designated by such conference, synod, presbytery, assembly, or association. 71 V. 110, §§ 1, 2, 3, 4.

§ 3784. Endowment fund corporations—

When a presbytery, synod, conference, diocesan convention, or other representative body of any religious denomination in this state, or when an assembly, synod, conference, convention, or other general ecclesiastical body of any religious denomination held in the United States, desires to create a board of trustees for any endowment fund or other property of the denomination represented by such body, and, at any regular meeting of such presbytery, synod, conference, diocesan convention, or other representative body of such denomination in this state, or of such assembly, synod, conference, convention, or other general ecclesiastical body in the United States, elects not less than five members of such denomination, one of whom shall be a resident freeholder in this state, to serve as trustees, and makes and files in the office of the secretary of state a statement, giving the names of such trustees, the character of the endowment fund, or other property to be intrusted to their care, and the uses to which it is to be applied, signed by the proper presiding officer and the secretary or clerk of such body, acknowledged before a clerk of a court of record, notary public, or a judicial officer having a seal, and the signing of the same is duly attested by such officer, and the statement thus authenticated is recorded in the office of the secretary of state, the persons named in such statement as trustees shall, thereupon, with their successors in office, become a

body corporate and politic for the purpose in such statement specified; and a copy of such record, duly certified by the secretary of state, shall be evidence of the existence of such corporation. 91 O. L. 83.

An election after a schism in a society, on the day fixed by the constitution, and being the only one held that year, but held without proper notice, constitutes those elected *de facto* trustees. First Presb. Soc. v. First Presb. Soc., 25 Ohio St. 128.

§ 3785. Power of trustees of such corporations—

Such trustees, if chosen to take charge of any endowment fund, may invest, manage, and dispose of the same in accordance with the purpose for which it was created, subject to such regulations as the body by which they were elected may from time to time prescribe. 71 v. 118, § 3.

§ 3786. Powers of trustees of religious society—Real Estate liable for labor performed, etc.—

If the trustees are chosen to take charge of and manage any other property that may be owned or in any manner acquired by such religious denomination, they shall have full power to hold, invest, control, and manage the same for the benefit of the denomination within the presbytery, synod, conference, diocese, or other ecclesiastical territorial limits represented by the trustees, subject to the direction of the proper representative body, of such denomination within such territorial limits as aforesaid; and if a parish or congregation connected with the denomination represented by the trustees become extinct, by reason of the death or dispersion of its members, the trustees may take possession of the church property of such parish, congregation, or society, whether real or personal, and rent, lease, sell, invest, or otherwise dispose of the same, for the benefit of the denomination represented by them, within the territorial limits represented by the body by which they were appointed, and subject to such regulations as such body may prescribe; but all property held by such trustees, and the proceeds thereof, shall be applied to the use and benefit of the proper denomination within the state; provided, however, that the real estate held by or in trust for any religious society or congregation, as a place of worship, or otherwise, shall be liable for and may by civil action be subjected to the payment of any judgment which has been or shall be re-

corded against the trustees or any committee of such society or congregation, in their individual capacity, or otherwise, for labor performed, materials furnished, or damages sustained, under any contract with them for the erection of any church edifice or other building or improvement made thereon. 79 O. L. 14.

§ 3787. When and how property of extinct corporations may be sold—

When any parish, congregation, or society becomes extinct, as mentioned in the last section, the court of common pleas of the county in which any real property of such extinct parish, congregation, or society is situate, may, upon the petition of the trustees of the denomination to which such extinct parish, congregation, or society belonged, make an order for the sale of such property, whether the same has been built upon, or otherwise improved, or not, the proceeds of such sale to go to, and be for the benefit of, the denomination represented by such trustees, within the territorial limits represented by the body by which they were appointed, and the purchaser thereof shall be vested with as full and complete a title to the property as the character of the original grant to such parish, congregation, or society will allow; but this section shall not be so construed as to limit, or in any degree restrict, the powers conferred by the two preceding sections upon such trustees. 74 V. 110, § 2.

**§ 3787a. Trustees of extinct parish, congregations, etc.—
Duty as to money received from sale of property—**

All money derived from the sale of any property under the provisions of original section and section *thirty-seven hundred and eighty-seven* shall be placed in the custody of the trustees of the presbytery, synod, conference, diocese, or other ecclesiastical body having jurisdiction in the territorial limits in which said property may have been located, and they shall hold the same in trust for the period of ten years, or for such period as may be prescribed by the law of the denomination. If within that time another parish, congregation, or society of the same denomination shall be organized in the same locality, then the court authorizing the sale of said property may, upon proper application and evidence, authorize the return of said money to the trustees of the new organization. Otherwise such money shall become a

part of the funds of the presbytery, synod, conference, diocese, or other ecclesiastical body having jurisdiction. 86 O. L. 133.

§ 3787b. Funds arising from such sale to be under control of presbytery, synod, etc.—

Be it further enacted, that all sums of money arising from the sale of property formerly belonging to any extinct parish, congregation, or society, and which are now held by special trustees appointed by the courts authorizing sale of such property, shall be, from and after the passage of this act, under the control of the trustees of the presbytery, synod, conference, or other ecclesiastical body to which said extinct parish, congregation, or society may have belonged, and shall be held by them subject to the conditions and provisions of this act; and said trustees are hereby authorized to take such steps, legal or otherwise, necessary to obtain possession of such money. 86 O. L. 133.

§ 3788. Who to be parties to proceedings for sale—

When a petition is filed, as provided for in the preceding section, all persons who may have a vested, contingent, or reversionary interest in such real estate, shall be made parties thereto, and be notified of the filing and pendency thereof, in the manner provided by law in cases of the partition of real estate; but the court may make such order as to costs as may be deemed just and proper. 74 v. 110, § 3.

§ 3789. How printing and publishing houses incorporated—

When a conference, presbytery, assembly, association, or other general ecclesiastical body held in the United States, elects, in conformity with the rules and regulations prescribed by such body, any number of persons, not less than three, as trustees or directors of a printing and publishing house, to hold their office until their successors are elected by such body, and a certificate of the election of such persons, and setting forth the name by which the corporation is to be known, signed by the clerk, secretary, or other like officer of such body, together with the written acceptance of such offices by the persons so elected thereto, is filed in the office of the secretary of state, such trustees shall be deemed and held to be duly incorporated, by the name set forth in such certificate. 68 v. 43, § 1.

§ 3790. Expired corporations may have benefit of last section—

Any corporation which has heretofore been established by special act of the legislature for the purpose named in the preceding section, and whose charter has expired, or hereafter expires, may be renewed by a compliance with the provisions of the preceding section on the part of the religious sect, association, or denomination to which such corporation belonged, or under the direction of which it was carried on; and the title to all property belonging to such former corporation at the date of the expiration of its charter, whether the same is real, personal, or mixed, shall pass to and be vested in the corporation so established. 68 v. 43, § 2.

§ 3791. Fiscal trustees of women's benevolent associations—

Any benevolent or charitable association incorporated by or under the laws of this state, and of which women are or may be trustees, managers or directors, may vest the custody, control, and management of all its endowment or capital, funds, and property in three male trustees, to be styled fiscal trustees, who shall be appointed from time to time, as follows: One by the court of common pleas of the county where such association is located, one by the probate court of such county, and one by the vote of the majority of the members of such association present at a regular meeting duly convoked; such trustees shall hold their office for three years, except the first appointed, who shall hold their office respectively for one, two and three years; they shall meet in the presence of the probate judge, and, by agreement, or by lot if they cannot agree, allot themselves accordingly, and the judge shall give to each a certificate of the term so allotted to him; and upon the death, resignation, incapacity or removal from the county, of either of such trustees, the vacancy shall be filled for the unexpired term by the same appointing power; but trustees shall not be appointed except upon the written request of the association, filed in the probate court, in accordance with the resolution adopted by the association, at a regular meeting thereof, duly convoked, and until such appointment the association, at a regular meeting, may elect any number of such trustees, not less than three, with the powers and

subject to the duties aforesaid, who shall hold their office for such time, not more than three years, as the association may, by its by-laws, determine. 75 v. 524, § 1.

§ 3792. Powers and duties of fiscal trustees—

The trustees shall have the exclusive right, power, and authority, in the name, and behalf of such association, to demand, take, and possess all the endowment or capital, funds or property which such association may have or be entitled to have, and the same securely manage, invest, change, and dispose of at their will, for the use and benefit of the association, so as to yield a regular income; they shall, every three months, or oftener if necessary and convenient, give account of all such funds, property, and income, to the proper board of trustees, managers or directors of the association, and shall collect at such times, and pay over to them or their order, all the net income of such investments, after deducting the actual and necessary expenses of the trust; but no charge or allowance for their services shall be made or permitted; and such trustees may, for the purposes aforesaid, in the name of the association, contract and be contracted with, prosecute and defend suits, and receive, hold, and dispose of all money and property which the association may have or acquire, or be entitled to have by gift, purchase, or otherwise, for its endowment; and when necessary for the purposes aforesaid may use the common seal of the corporation; but they shall not have or exercise any power, authority, or control over the institution or affairs of such corporation, other than its fiscal affairs as hereinbefore limited, nor be liable for its debts, or for anything but their own acts or negligence. 61 v. 87, § 2; S. & S. 52.

§ 3793. Other associations may accept these provisions—

Any benevolent or charitable association hereafter formed, coming within the purview of section *thirty-seven hundred and ninety-one*, may make the provisions of the two preceding sections part of its articles of incorporation, and any such association now incorporated, by or under any general or special law, may accept such provisions, by a vote of the majority of the members present at a regular meeting, and when so accepted, and a certified copy of such acceptance filed in the office of the secretary of state, the provisions of the two preceding sections shall become and be a part of its charter. 61 v. 87, § 3; S. & S. 52.

§ 3793a. Consolidation of charitable or benevolent associations, etc.—

When two or more charitable or benevolent associations, societies or organizations now or hereafter formed or incorporated by or under any law of this state for charitable or benevolent purposes, desire to be consolidated or united as a single corporation, or when two or more charitable or benevolent associations, societies or organizations, one or more of which is, or may hereafter be, incorporated under the law of this state for charitable or benevolent purposes, desire to be consolidated or united as a single corporation, the trustees, directors, or other known and legal representatives, or governing body or bodies, of such associations, societies or organizations may enter into an agreement for such union or consolidation and prescribe the terms and conditions thereof, the corporate name of such united association, society or organization, which may be the name of either one of them, or an entirely new name, the time and place for the first meeting of the new corporation, the number of members of one or more of each separate branch or organization who shall be chosen as directors, trustees, or other officers of the new corporation to succeed to the rights, trusts, duties and obligations of those officers who in either or any of the separate organizations held in trust the estate, real and personal, of such separate association, society or organization, with such other estates as they may deem necessary to complete the new corporation, but an agreement so made shall not be valid until it has been submitted to a separate meeting of the members of each of said associations, societies or organizations, of which due and full notice has been given according to the form and usage for calling meetings of each of said associations, societies or organizations, and ratified by a two-thirds vote of all the members present at such meeting, in person or by proxy, and entitled to vote according to the laws, regulations or usages of such associations, societies, organizations, or corporations, respectively. 93 v. 136.

§ 3793b. Ratification of agreement—

When such agreement has been ratified by each association, society, organization or corporation which is a party to the proposed united organization, the clerk or secretary of each meeting shall certify the record of the proceedings thereof, and deliver

the same to the clerk or secretary of the first meeting of the united association, society, organization or corporation, as herein provided and as specified in the terms of agreement. 93 v. 136.

**3793c. Each member entitled to vote ; approval, etc.—
Agreement to be filed with secretary of state—**

At the first meeting of the united association, society, organization or corporation, each member of each of said associations, societies, organizations or corporations shall be entitled to vote, and, if at such meeting the proceedings and acts of the several associations, societies, organizations or corporations, parties thereto, are submitted to and approved by the meeting, and a board of trustees, directors or other officers are chosen, in accordance with the terms of agreement, the clerk or secretary of the meeting shall certify such approved agreement or terms of union and file the same in the office of the secretary of state, whereupon the several associations, societies, organizations or corporations, parties thereto, shall be deemed and taken to be one corporation under the name by it adopted, possessing within this state all the rights, privileges and franchises, and subject to all the restrictions, disabilities and duties of such new corporation. 93 v. 136.

§ 3793d. Unperformed acts at first meeting may be perfected subsequently—

Any of the acts provided for by section 3793c which shall not be performed or perfected at such first meeting may be performed and perfected at any subsequent or adjourned meeting of such united corporation. 93 v. 136.

§ 3793e. Recording of certificate of agreement—Evidence of corporate existence—

The certificate to the secretary of state provided for by section 3793c shall be by him recorded, and a copy duly certified by him shall be recorded in the office of the recorder of deeds of the county where such corporation exists and may be recorded in the office of the recorder of deeds of any county where any real estate lies belonging to any of said associations, societies, organizations or corporations entering into said union, and a certified copy by the recorder of either county in whose office the same is recorded, or a copy certified by the secretary of state of the record in his

office, shall be prima facie evidence of the existence of such corporation. 93 v. 136.

§ 3793f. Constitution, by-laws and rules—

Such united corporation shall be authorized to adopt a constitution, by-laws and rules not inconsistent with the laws of the State of Ohio, and to amend the same from time to time under such provisions for such amendment as it may at any time adopt. 93 v. 136.

§ 3793g. Rights, powers and privileges of new corporation—

All the various associations, societies, organizations or corporations entering into such union shall be merged in said united body and the new corporation with its officers and chosen directors, trustees or other representatives shall succeed to, and be vested with, all and singular, the right, title and interest in and to every species of property, real, personal and mixed, and all and singular the rights, privileges and franchises held by or vested in each of the said associations, societies, organizations or corporations, parties to the agreement, without any other act, conveyance or transfer, and such new corporation shall hold and enjoy the same with all the rights pertaining to such property, franchises and trusts, and shall be subject to all the debts, liabilities and obligations in the same manner and to the same extent as any or either of the associations, societies, organizations or corporations, parties to the new corporation. 93 v. 136.

§ 3793h. Property held in trust to be governed by original terms—

All and any real estate or other property vested or held by either of said associations, societies or organizations or corporations under any trust or terms governing the grant, shall continue to be subject to such trust and controlled by the original terms under which such real estate or property became vested in or entrusted to the parties to the union. 93 v. 136.

§ 3793i. Petition for conveyance of real estate; order of court; decree to serve as conveyance—Defendants to petition—

The united corporation may, at the request of a majority of its

members, or by act of its trustees, directors or other governing body, in its corporate name petition the court of common pleas of the proper county, setting forth the fact of such union, and the court may in its discretion make an order requiring such officers to convey to such new corporation the real estate owned and held by the parties to the union, as the court may direct, and, if any of such officers refuse or neglect to obey such order, the decree of the court shall serve as such conveyance, but such order shall in no case be inconsistent with the original terms under which such real estate became vested in, or entrusted to, the parties to the union; and in all cases the grantors of such real estate, to such parties, or their heirs, or such other parties as the petitioners may deem advisable, may be made defendants to such petition, and such of the defendants who shall make no defense shall not be subject to costs. 93 v. 136.

§ 3793j. Notice of petition by publication—

Notice of the pendency of such petition shall be given by publication in a newspaper published in the county where the petition is filed for four consecutive weeks, setting forth the object and prayer of the petition, and, if no newspaper is printed in such county, publication shall be made in the newspaper published nearest to such county. 93 v. 136.

§ 3793k. Subsequent union of associations, etc., with corporation—

Subsequent to the creation of the united corporation under the provisions of sections 3793*a* to 3793*j*, inclusive, any one or more associations, societies, organizations or corporations of like character, may at any time unite with and become a part of said corporation in accordance with the provisions of said sections. 93 v. 136.

**§ 3794. Sale, exchange or incumbrance of real estate by charitable or religious society or association—
Petition for purpose, etc.—**

When any charitable or religious society or association desires to sell, exchange or incumber by mortgage or otherwise any real estate now or hereafter owned by it, or held in trust by it for any specified religious or charitable purpose, or held for its use or benefit by trustees either chosen by it or otherwise constituted

for any such religious or charitable purpose, except grounds used or occupied as burial places for the dead, the trustees, wardens and vestry, or other officers intrusted with the management of the affairs of such society or association or holding title to such property, or such society or association itself, if it be incorporated under any law of this state, may file in the court of common pleas of the county in which such real estate is situated, a petition stating how and by whom the title thereto is held, that such society or association desires to make such sale, exchange or incumbrance, and setting forth the object of the same; and if upon the hearing of such case it appears that such sale, exchange or incumbrance is desired by the members of such society or association and that it is right and proper that authority be given to accomplish the same, the court may authorize the trustees or other officers of such society or association, or if incorporated as aforesaid the society or association itself, to sell, exchange or incumber such real estate in accordance with the prayer of the petition and upon such terms as the court shall deem reasonable; and in case the title thereto is held for the use or benefit of such society or association by trustees, all or a majority of whom are not chosen thereby but otherwise constituted and who refuse upon request of such society or association, or its duly elected trustees, wardens and vestry, or other officers, to file such petition, the court upon the petition of such society or association or its duly elected trustees, or other officers aforesaid, may require said trustees holding such title to convey or incumber such real estate in accordance with the prayer of the petition and upon such terms as shall be deemed reasonable; provided, that all trustees holding title as aforesaid and refusing to file or join in such petition shall be made defendants therein and be served with summons as in a civil action. 92 O. L. 397.

§ 3794a. Interconveyance of property—

The trustees of any church organization, religious or charitable society or association and all persons now or hereafter holding title to any property in trust therefor are hereby authorized and empowered to transfer and convey the same to other trustees of the same denomination or to the trustees of such organization, society or association for which the same is held in trust, or to such organization, society or association itself if incorporated un-

der the law of this state; provided, however, such transfer or conveyance shall be made only when the property so transferred is still to be used for the specified religious, charitable or church purposes, and the same shall be thereafter held in trust by the grantees for such purposes. 92 O. L. 397.

§ 3794b. Title to certain transfers of real estate guaranteed—

Provided, however, that where the trustees or other officers mentioned in section *thirty-seven hundred and ninety-four* have heretofore sold and conveyed by deed in fee simple or mortgaged any real estate therein mentioned, without proceeding as required by such section, and the grantees thereof, and their successors in line of title, have, for five years since the date of such conveyance, held continued, exclusive, notorious and adverse possession of such real estate so conveyed, such sales, conveyances and mortgages shall be of, and have the same validity and effect as if the same had been made by proceedings instituted under said section and duly confirmed by the court of common pleas. 93 O. L. 101.

(§ 3794-1.) Sec. 1. Women's Christian associations empowered to procure homes for children—

That every women's Christian association now or hereafter incorporated under the laws of the State of Ohio, having and maintaining a branch or department as a retreat for unfortunate or fallen women, shall have, and they are hereby vested with, all the powers and authority conferred upon children's homes, incorporated under the laws of this state, in placing, indenturing and procuring the adoption in private families of children who are born in such retreats of the inmates thereof, and who are abandoned or deserted by their parents, and the supervision over them after they have been so placed or adopted. 89 O. L. 405.

§ 3795. Notice of the pendency of the petition—

The petitioners shall cause notice of the pendency and prayer of the petition to be published in some newspaper of general circulation in the county where the real estate proposed to be sold, exchanged, or incumbered, is situate, for four consecutive weeks before the said application shall be heard. 79 O. L. 108.

§ 3796. Sales to be confirmed by court—

The trustees or other officers of such religious society authorized to make such sale, exchange, or incumbrance, shall make return thereof to the court ordering the same, at such time as the court shall order, and thereupon, if the court is satisfied that the same has been made in all respects according to its order, it shall approve the same, and shall order that the proceeds be invested in other real estate for the use of such society, used in the payment of its debts, or otherwise invested or disposed of according to the prayer of said petition. 79 O. L. 108.

§ 3796a. Secret benevolent society empowered to invest reserve funds—

That any secret benevolent association or society incorporated under or by the laws of the state, which shall have any reserve or accumulated funds, or moneys, held by them for the purpose of endowment of the widows, orphans, families, blood relatives or heirs of the members of such benevolent society or association, or for purely charitable purposes, shall have the right and power to invest such funds or moneys upon interest and shall take securities for such investment upon real or personal property, or otherwise, as such society or association may deem fit. 94 O. L. 354.

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§ 3797. Savings and loan associations—

The secretary of state shall submit the articles of incorporation of any savings and loan association received by him to the attorney-general, who shall, if the same are in conformity to law, and sufficient, certify thereto on the same, and the secretary of state shall then record the same; and no such association shall commence business with a subscribed capital of less than fifty thousand dollars, except in villages having a population at the federal census of 1880, or at any federal census to be taken hereafter, of less than twenty-five hundred, and in such villages no such associations shall commence business with a subscribed capital of less than twenty-five thousand dollars, which shall be divided into shares of one hundred dollars [each], nor until at least one-half of each subscription has been fully paid up. 86 O. L. 270.

"Associations with banking powers," referred to in Art. XIII, sec. 7, of

the constitution, embraces only banks of issue. *Dearborn v. Northwestern Savings Bank*, 42 Ohio St., 617.

By-law providing for lien on stock for debts due from holder, which provision appears on face of stock, is binding on stockholders and those claiming under them. *Tomb & Felsh, assignee*, 40 B. 186 (Sup. Ct.); see also notes to sec. 3808.

§ 2798. General regulations of such associations—

The signers of the articles of incorporation shall give at least three days' notice, personally served upon each stockholder, or thirty days' notice by publication, of the time and place of the meeting for the election of directors; the offices of secretary and treasurer of the corporation may be held by the same person; and at every annual meeting the directors shall make full report of the business of the preceding year, and the present financial condition of the corporation. 70 v. 40, §§ 5, 6, 7.

§ 3799. Deposits, and the payment thereof—

The board of directors may prescribe the terms on which deposits shall be received and paid out, and the mode of transacting, managing, and conducting the affairs and business of the corporation; and the rules and regulations relating to the receipts and payment of deposits, and the interest thereon, shall be written or printed in the pass-books of depositors, shall not be altered so as to affect any deposit previously made, and shall be obligatory on such depositors. 70 v. 40, § 9.

§ 3800. Officers must give bond—

The officers of such corporations, other than directors, shall, before entering upon the discharge of their duties, give bond to the corporation, to the amount required by the directors, and with security to be approved by them, for their fidelity and good conduct, and for the safe keeping and proper application of the funds of the association, and of such sums of money as may be placed in their charge by the depositors or others; and the directors may require an increase of the amount of such bonds whenever they deem it necessary. 70 v. 40, § 10.

§ 3801. Deposit by persons under disability—

When deposit is made in any such association by a minor, or a female who is or thereafter becomes a married woman, the same shall be held for the exclusive right and benefit of such depositor,

free from the control or lien of any person, except creditors, and shall be repaid to the person making the deposit, and the receipt or acquittance of such minor or female shall be a sufficient release and discharge to the corporation for such deposit. 70 v. 40, § 11.

§ 3802. Officers shall not borrow of the association—

No director or other officer of such corporation shall borrow or use the funds of the corporation, except to pay the necessary and current expenses, to an amount greater than one-half of the amount of stock by him owned or held; nor shall any officer or director be surety, or in any manner an obligor, for any loan made by the corporation. 70 v. 40, § 12.

§ 3803. What real estate it may acquire—

Such corporation may acquire, hold, and convey only such real estate as is necessary and convenient for the transaction of its business, and such as it may find necessary to purchase, at judicial sale or otherwise, to secure debts due it; but it shall not hold any real estate purchased to secure debts due it for a longer period than five years; and in all cases of loan upon real estate; the expense of searches, examination of certificates, and recording of papers, shall be paid by the borrower. 70 v. 40, § 13.

§ 3804. Interest may be paid on deposits—

Such corporations may receive on deposit, for safekeeping or investment, all sums of money that may be offered for that purpose by tradesmen, clerks, mechanics, laborers, minors, or other persons, or by any religious or charitable society, or municipal corporation, or that may be ordered to be deposited by any court in this state having custody of money, and make investments thereof in the manner provided in this chapter, and may credit and pay such rates of interest thereon as may be agreed upon, not exceeding the rate allowed by law; and they may purchase and sell promissory notes, drafts, and bills of exchange, at such rates as may be agreed upon, and transact such other business as properly pertains to the business of such associations not forbidden by the constitution and laws of this state. 70 v. 40, § 14.

§ 3805. Stockholders to share ratably in increased stock—

Upon any increase of stock, the stockholders at the time of such increase, shall each be entitled to a pro rata share thereof, upon the payment of its par value; but such right shall be forfeited if the amount be not paid within thirty days of the time fixed therefor by the directors by public notice. 70 v. 40, § 15.

§ 3806. Investment of funds—Discounts; interest; exchange—Advertisement of capital not paid in, prohibited—

Such corporations may invest their funds in the purchase of stocks, bonds or other evidences of indebtedness of the United States, stocks and bonds of the State of Ohio, bonds of any municipal corporation of this state, or school bonds of any municipal corporation, special school district or body politic in this state, issued pursuant to law, or in bonds issued by county commissioners within this state in pursuance of law, to such an amount as may be deemed proper, or the stocks or bonds of any state of the United States that has, for five years immediately preceding such investment, paid the interest on its bonded debt in lawful money of the United States, to the extent of ten per cent of their paid in capital and deposits, or in bonds or notes secured by mortgages on unincumbered real estate situated in the county where the association is located, or any adjoining county in this state, worth, exclusive of buildings, at least double the amount loaned thereon, unless accompanied with valid insurance upon the buildings thereon that will make the value of the real estate and insurance at least double the amount loaned thereon; but not more than seventy-five per centum of the amount of the paid in capital and deposits of any such association shall at any time be invested in such real estate securities. Such associations may discount notes and bills of exchange, and may take, receive, reserve and charge upon any loan or discount made upon any note, bill of exchange or other evidence of debt, interest at the rate allowed by law. Such interest may be reserved or taken in advance at the time of making the loan or discount; and for interest taken directly or indirectly in excess thereof, the associations shall be subject to the same penalties as natural persons; but in the purchase, discount or sale of a bill of exchange, payable at another place than the place of such purchase, discount or sale, the current rate of discount or

premium may be charged and received in addition thereto. And no such corporation shall advertise by newspaper or letter-head or in any other way a larger capital stock than has been actually paid in. 89 O. L. 366.

In transactions with incorporated banking association by innocent party, neither the abuse nor disregard of his authority by its managing officer or agent, or his fraud or bad faith, will be a defense to such incorporation. *Citizens' Sav'gs Bank v. Blakesley*, 42 Ohio St. 645.

Such association cannot enforce contract for interest which is usurious here, though contract is made in a state where the rate stipulated is authorized; but the contract will not be invalid *in toto* for want of power to make it. *Ewing v. Toledo S. B. & Trust Co.*, 43 Ohio St. 31.

§ 3806a. Loans by savings banks in counties containing a city of the second grade, first class; how made—

Provided, that any savings bank in a county containing a city of the second grade of the first class, having in its articles of incorporation expressed the purpose to loan money upon pledges of personal property, it shall, as to all such loans, be subject to all laws and ordinances governing pawn-brokers; and such corporation having in its articles of incorporation such purpose so expressed, may invest its funds in loans upon personal property left with such corporation in pledge, not exceeding fifty per cent of the cash value of such pledge, and upon such loans such corporation may charge and collect a rate of interest not exceeding one per cent a month, and in addition to the cost of rent, insurance and storage, not exceeding one-half of one per cent a month. In all cases where such corporation does a general pawn-broking business, the articles received in pledge shall be kept for ninety (90) days after the loan becomes due, when, if not redeemed, they shall be sold; and the proceeds of such sale after payment of interest, costs of loan, storage, as hereinbefore provided, and the reasonable expenses of sale, shall be credited to the party [to whom] the loan was made and paid upon demand, together with any interest which may accrue thereon under the rules of such corporation governing deposits; provided, that any such corporation having expressed in its charter "to loan money upon pledges of personal property," shall have the same condition printed in all pass or deposit books and a notice conspicuously displayed in said bank stating that loans are so made by such corporation. And no corporation shall advertise by newspaper

or letter-head, or in any other way, a larger capital stock than has actually been paid in. 86 O. L. 369.

The lien upon pledges of personal property is not lost although the pledgee has not complied with the law concerning pawnbrokers. *Griffith v. Goldsall*, 42 B. 264 (Sup. Ct.).

§ 3806b. Powers of associations loaning money on chattel mortgage in certain cities—Capital such associations must have—

In cities of the first and third grades of the first class and the first and second grades of the second class, a company organized under the general incorporation laws of the state for the purposes and in accordance with the provisions of this chapter, and which also states in its articles of incorporation that it is organized for the purpose of making loans secured by mortgage of personal property, and which shall display in its place of business, a notice that it loans money upon chattel mortgage, shall have power to invest its funds in loans not greater than one thousand dollars each, upon mortgage of personal property not exceeding fifty per cent of the value thereof. And upon such loans such company may charge and collect a rate of interest not exceeding one and one-half per cent per month, and shall charge no commission, and not more than seventy-five cents for preparing a mortgage or contract, and the actual legal expenses of filing or recording the same, and such charge as may be agreed upon in written contract between the parties for inspection of property mortgaged, and indemnity against loss by fire when insurance is not made by mortgagor. And if any greater charge is made than is herein authorized such company shall forfeit the whole amount of interest. Such company shall have power to borrow money upon its certificates of indebtedness, but not exceeding the amount of its paid capital, and at interest not exceeding legal rates. The capital stock shall not be less than fifty thousand dollars, provided, that a company organized in pursuance hereof may commence business when fifteen thousand dollars of capital are actually paid in. 91 O. L. 308.

§ 3807. Limit of loans to one person—

The total liabilities of any person, company, corporation, or firm, to any such association, either as principal debtor, or as security or indorser for others, for money borrowed, including in

the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-fifth part of the capital stock of such association actually paid in; but the discount of bills of exchange drawn against actually existing values, and the discount of commercial or business paper actually owned by the person, company, corporation or firm negotiating the same, shall not be considered as money borrowed. 70 v. 40, § 17.

§ 3808. Dividends—

The directors may, as often as they deem proper, make and declare dividends of the profits of the corporation, after paying its expenses, and reserving and setting aside from the net profits of the institution not less than one-tenth part thereof, to be held and invested as a surplus fund to meet any contingency in its business, which reservation shall continue until such surplus is equal to at least twenty per cent of the amount of the full capital stock; and such dividends shall be payable to the shareholders within ten days from the time the same are so declared. 70 v. 40, § 18.

Such association has power to create a lien upon its stock to secure a loan; a by-law may be created by custom and acquiescence; if notice of such lien is printed on the face of stock certificates, purchasers have notice, and are bound by a loan made after the sale by the association and without notice of the sale. *Stafford v. Produce Ex. Banking Co.*, 42 B. 342, affirming 16 C. C. 50. See, also, note to 3797.

Such association may enact a by-law providing that dividends may be withheld to apply on any indebtedness of the stockholder, and that no assignment of dividends can be made while such liability exists, except by consent of the board of directors. *Bellevue Bank v. Higbee*, 4 C. C. 222, affirmed, 28 B. 336.

§ 3809. Distribution when association ceases to do business—

When any association ceases to do business, or the directors thereof determine to close up its affairs, the assets of the association shall be distributed and disbursed by the directors, or other designated persons, as follows:

- 1st. In payment of depositors.
- 2d. In payment of the debts of the corporation.
3. The remainder shall be distributed proportionately among the shareholders. 70 v. 40, § 20.

§ 3810. Notices and reports to auditor of state—

The directors of every such association shall, within six months from and after its incorporation, notify the auditor of state of the date of its organization, and shall, each year, within ten days after its annual meeting, make, under oath, a complete statement of its condition, showing the amount of deposits and capital stock, the amount of the investments, and specifying the character of the same, which statement shall be filed with the auditor of state, and published in his annual report; and they shall also cause such statement to be published in at least one newspaper of general circulation in the county where the corporation is located 70 v. 40, § 21.

§ 3811. Certain corporations not affected—

Associations incorporated under the act entitled "an act to incorporate savings societies," passed April 16, 1867, and the act passed March 19, 1868, entitled "an act to amend an act entitled 'an act to incorporate savings societies,' passed April 16, 1867," may continue their business under said acts, and without any prejudice to any rights acquired; such institutions, and other savings and loan institutions organized under the laws of this state, may, if they so elect, continue their business under this chapter, by signifying such election, under their seal, to the secretary of state, and conforming their action thereto; and the secretary shall record the same, and his certificate be evidence thereof. 70 v. 40, § 23.

Trustees doing business not authorized, though in the name of the corporation, are individually liable upon contracts entered into; in this case a deposit of money. *Ridenour v. Mayo*, 40 Ohio St. 9. See, also, *Medill v. Collier*, 16 Ohio St. 599.

Such societies are not required to pay taxes upon deposits, which are the property of the depositors, who are required to return and pay taxes upon the value of their interests in the society. *Collett v. Springfield Savings Society*, 13 C. C. 131, affirmed in 37 B. 332, 334.

§ 3812. Their powers increased—

Savings societies organized and doing business under the acts named in the preceding section may, in addition to the investments authorized in said acts, invest their funds in the bonds of any county or municipal corporation issued in pursuance of any law of this state, and may charge interest on loans at a rate not

to exceed eight per centum, payable semi-annually. 72 v. 150, §§ 1, 2.

§ 3813. Further increase of their powers—

Societies for savings, duly incorporated by the general assembly of this state, and doing business under their respective acts of incorporation, may invest in land, and in the erection of buildings thereon, for the purpose of their own business, such sum as the trustees thereof deem necessary, not to exceed five per cent of the amount of the deposits held by them, and they may rent any part of such buildings not needed for their own use. 63 v. 62, § 1; S. & S. 187.

§ 3814. Certain charters extended—

All "societies for savings," and "savings societies," now doing business, whose charters are subject to alteration or repeal, may continue their business under their respective charters, after the expiration thereof, subject, however, to the repeal of any such charter, and to such amendments, alterations, rules and regulations as may be prescribed, from time to time, by any law of the state. 74 v. 26, § 1.

§ 3815. Must create a surplus fund—

Before any dividend, or interest on deposits, shall be paid by such societies, they must have a surplus fund equal to not less than five per centum of the whole amount of deposits, and they must gradually increase such surplus fund to an amount equal to ten per centum of the amount of deposits. 74 v. 26, § 2.

§ 3816. Annual reports to the auditor of state—

The president and treasurer of every such society shall make to the auditor of state, annually, in writing, during the month of June, an accurate statement of the financial affairs of the society, and the auditor of state shall cause the same to be investigated and examined by two suitable persons, appointed by him, who shall, within a reasonable time, report to him the result of the investigation and examination, with such suggestions as to them seem right and proper; the report of the president and treasurer, with the report of the examiners, or such portion thereof as the auditor of state deems advisable, shall be published in some newspaper printed and having general circulation within

the county, to be designated by the auditor; and the auditor shall allow the examiners a reasonable compensation for their services, and such compensation, with the cost of publication, shall be paid by the society. 74 v. 26, § 3.

§ 3817. Annual reports of certain corporations to same—

Every banking institution, or corporation engaged in the business of banking, organized under the laws of this state, shall make a report to the auditor of state, as provided in the next section, showing the condition thereof before the commencement of business on the first Monday of the months of April and October of each year; but institutions known as building or loan associations, organized and conducted under the statutes for such institutions, and not doing a banking business, shall not be required to make such reports. 74 v. 72, § 1.

§ 3818. Auditor to require same—Penalty—

The auditor of state shall issue his requisition upon each of such institutions, for the reports required to be made by the preceding section, a convenient number of days prior to the first day of April and October of each year, upon receipt of which it shall immediately forward to the auditor a balanced report of its condition, verified by the oath or affirmation of one or more of its officers, and shall also publish such report in full, at its own expense, in a newspaper published at the place where the institution is located, or, if there is no newspaper published at that place, then in the one nearest thereto; if any such institution neglect to comply with these provisions it shall be subject to a penalty of thirty dollars for each day's delay after the expiration of five days from the time any such report is required to be made, which penalty may be collected by a suit to be brought by the auditor of state, or by any creditor of the association, before any court of competent jurisdiction in the district wherein such institution is located; and all sums of money collected for penalties under this section shall be paid into the treasury of the state. 74 v. 72, § 2.

§ 3819. Form of report of stock companies—

All savings associations, banks, trust companies, savings banks, and other banking institutions having capital stock, shall make such report of their resources and liabilities in the following form:

Report of the condition of "The _____, at _____, in the State of _____, before
the commencement of business on the first Monday of _____, 19—.

DR.

CR.

RESOURCES.	Dollars	Cts.	LIABILITIES,	Dollars	Cts.
1. Loans on real estate			1. Capital stock paid in.....		
2. All other loans and dis- counts.. ..			2. Surplus fund.....		
3. Overdrafts.. ..			3. Undivided profits		
4. United States bonds on hand			4. State bank notes outstand- ing.....		
5. State bonds			5. Dividends unpaid		
6. Other stocks, bonds, and mortgages			6. Individual deposits.....		
7. Due from other banks and bankers			7. Due to banks and bankers..		
8. Real estate.....			8. Notes and bills re-dis- counted		
9. Furniture and fixtures.....			9. Bills payable.....		
10. Current expenses					
11. Premium on bonds					
12. Cash items.....					
13. Gold coin, \$—; silver coin, \$—.....					
14. National bank notes					
15. United States notes					
Total			Total		

STATE OF _____,
County of _____
Sworn to and subscribed before me this
_____ day of _____, 19—.

I, _____, of "The _____," do
solemnly swear that the above statement is
true, to the best of my knowledge and belief.

Cashier.

74 v. 72, § 3.

§ 3820. Form of report of other corporations—

All savings associations, savings banks, and other banking in-
stitutions having no capital stock, shall make such report of their
resources and liabilities in the following form:

Report of the condition of "The _____, at _____, in the State of _____ before,
the commencement of business on the first Monday of _____, 19—.

DR.

CR.

RESOURCES.	Dollars	Cts.	LIABILITIES.	Dollars	Cts.
1. Loans on real estate			1. Individual deposits.....		
2. Loans on United States and state stocks			2. Due to banks and bankers..		
3. Loans on other stocks and bonds			3. Undivided profits.....		
4. All other loans.. ..			4. Other liabilities.....		
5. United States bonds on hand					
6. State bonds on hand					
7. Other stocks and bonds					
8. Real estate.....					
9. Furniture and fixtures.....					
10. Expenses.....					
11. Due from banks and bank- ers.....					
12. Specie.....					
13. National bank and U. S. currency.....					
14. All other assets.....					
Total			Total		

STATE OF _____, <i>County of _____.</i> Sworn to and subscribed before me, this _____ day of _____, 19____, _____,		I, _____, of "The _____," do solemnly swear that the above statement is true, to the best of my knowledge and belief. <div style="text-align: right;">_____ Cashier.</div>
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And such associations and banks shall also furnish with their reports a statement showing the number of open accounts, and the rate per centum of dividends and of interest on deposits for the past year. 74 v. 72, § 4.

§ 3821. Reports to be compiled and published—

The October reports shall be compiled by the auditor of state, and transmitted to the general assembly with his annual report. 74 v. 72, § 5.

§ 3821a. Powers of safe deposit companies—

Safe deposit and trust companies shall have power to provide by lease or purchase a proper and secure fire proof building or buildings, and fire and burglar proof vaults or safes, and to receive on deposit for safe keeping therein, government securities, stocks, bonds, coins, jewelry, plate, valuable books, papers and documents, and other property of every kind, and to collect and disburse the interest or income upon such said property received on deposit as produces interest or income, and to collect and disburse the principal of such of said property as produces interest or income when it becomes due, upon terms to be prescribed by such company so receiving such property.

Said companies shall also have power to act as agent or trustee for the purpose of registering, countersigning, or transferring the certificate of stock, bonds, or other evidences of indebtedness of any corporation, association, municipality, state or public authority, upon such terms as may be agreed upon.

Courts may order moneys paid into courts to be deposited with such companies. Any court in this state, including probate courts, may by order, decree, or otherwise, direct any moneys or properties under its control, or that may be paid into court by parties to any action or legal proceedings, or which may be brought into court by reason of any order, judgment, or decree, in equity or otherwise, to be deposited with such safe deposit and trust company, as may be by such court designated, upon such terms, and subject to such instructions as may be deemed expedient; provided, however, that such company shall not be required to assume or execute any

trust without its own consent; such companies shall also have power to receive and hold moneys, or property in trust, or on deposit from executors, administrators, assignees, guardians, trustees, corporations, or individuals upon such terms and conditions as may be obtained or agreed upon between the parties.

How moneys received in trust by such companies to be loaned. All moneys or properties received in trust by such companies, unless by the terms of the trust some other mode of investment is prescribed, together with the capital of such company, shall be loaned on or invested only in the authorized loans of the United States, or of the State of Ohio, or cities, counties, or towns of this state, or the stocks or bonds of any state in the Union that has for five years previous to such investment being made, regularly paid the interest on its legal bonded debt in lawful money of the United States, or cities, counties, or towns of such states, which shall have so paid the interest on the legal bonded debt of such cities, counties, or towns, or stocks of national banks organized within this state, or the first mortgage bonds of any railroad company within the state above named, which has earned and paid regular dividends on its stock for five years next preceding such loan, or investment, or first mortgages on real estate in this state or of individuals with a sufficient pledge of any of the aforesaid securities, or may be loaned to this state, or to any county, city, or town therein.

No loan shall ever be made directly or indirectly to any officer, employe or trustee of such company, and not more than ten per centum of its capital shall be invested in any one security or loan except in the provisions of a building and vaults.

Real estate acquired by such company by foreclosure of mortgage, etc., to be sold. All real estate not needed by such companies for the transaction of its [their] business, which may be acquired by foreclosure of mortgage or by levy of execution, shall be offered for sale, and if practicable be sold within two years after the same shall be so acquired. 79 O. L. 101.

Such companies have power to receive and hold money and property in trust, and can act as trustees under a mortgage in a case germane to the purposes of their incorporation. *Cin. Hotel Co. v. Central Trust and Safe Dep. Co.*, 25 B. 375. See 88 O. L. 407.

§ 3821b. Account of moneys, etc., received in trust shall be kept separate—

All money or property held in trust shall constitute a deposit in the trust department, and the accounts thereof shall be kept separate, and such funds and the investment or loans of them shall be especially appropriated to the security and payment of all such deposits, and not be subject to any other liabilities of the company, and for the purpose of securing the observance of this proviso, such companies shall have a trust department, in which all business pertaining to such trust property shall be kept separate and distinct from its general business.

Said companies must maintain a reserve equal to fifteen per cent of deposits. Such company shall at all times have on hand in lawful money of the United States as a reserve, an amount equal to fifteen per centum of all deposits, payable on demand or within ten days; and when said reserve shall be below such per centum of such deposits, said company shall not make new loans, nor make any dividends of its profits until the required proportion between the aggregate amount of its deposits and its reserve shall be restored; provided, that clearing-house certificates representing specie or lawful money specially deposited in the vault of such safe deposit company, or the United States sub-treasury, for the purpose of any clearing-house association of which said company may be a member, may be recorded as a part, not exceeding one-third of said reserve; provided, further, that one other third of said fifteen per centum shall consist of bonds of the United States or this state, the absolute property of said company, and the remaining third of said fifteen per centum in lawful money of the United States.

Such company may be appointed trustee under will—Capital stock security for faithful discharge of duties. Any such company may be appointed trustee under any will or instrument creating a trust for the care and management of property, under the same circumstances, in the same manner, and subject to the same control by the court having jurisdiction of the same, as in the case of a legally qualified person. The capital stock of said company, with the liabilities of the stockholders existing thereunder, shall be held as security for the faithful discharge of the duties undertaken by virtue of this act, and surety shall be required upon

the bonds filed by such company for the same as in other cases. In all proceedings in the probate court or elsewhere, connected with any authority exercised under this act, all accounts, returns, and other papers may be signed and sworn to in behalf of such company by any officer thereof duly authorized by it; and the answers and examinations, under oath, of such officer, shall be received as the answers and examinations of the company, and the court may order and compel any and all officers of such company to answer and attend said examination in the same manner as if they were parties to the proceedings or inquiry, instead of such company; provided, however, that such company shall not be required to receive or hold any property or moneys, or to execute any trust contrary to its own desire.

Money held in trust to be invested in trust funds of company. In the management of money and property held by it as trustee, under the powers conferred in the foregoing section, said companies shall invest the same in the general trust fund of the company; provided, that it shall be competent for the authority making the appointment to direct, upon the conferring of the same, whether such money and property shall be held separately or invested in the general trust fund of the company; and provided, also, that said company shall always be bound to follow and be entirely governed by all directions contained in any will or instrument under which it may act.

Money held in trust not mingled with other funds, or be liable for debts of company. No money, property, or securities received or held by such company under the provisions of this act establishing a trust department, shall be mingled with the investments of the capital stock or other moneys or property belonging to said company, or be liable for debts or obligations thereof.

Liability of stockholders. The stockholders of such company shall be held individually liable for all contracts, debts and engagements of such company, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares.

Trustees to notify auditor of state of organization of company, and make statement—Auditor of state may appoint expert to examine affairs of such companies. The trustees of all companies organized under this act shall, within six months after the incorporation of such company, notify the auditor of state of the date

of the organization thereof, and shall within ten days after the annual meeting thereof in each year make, under oath, a complete statement of the condition of said company, in which they shall specify the different kinds of its liabilities, and the different kinds of its assets, stating the amount of each kind, which statement shall be filed with the auditor of state and published in his annual report, and said auditor of state shall have the right and the power at any time, through an expert appointed by him, to make a full examination of the affairs and condition of every such company. The trustees shall also cause said statement to be published in a newspaper of general circulation in the county in which the principal office of such company shall be located.

Dividends, and how paid. The trustees shall have power by their by-laws, as often as they may deem proper, to make and declare dividends of the profits of said company after paying its expenses and reserving and setting aside the reserve as herein before required, and such other amount as they deem advisable wherewith to meet any contingency in its business. The dividends authorized herein shall be payable to the shareholders within twenty days from and after the time the same are so declared. No company organized under this act shall commence business until all of its authorized capital shall have been paid up in cash.

Increase of capital stock. Any safe-deposit and trust company may increase its capital stock as provided in sections *thirty-two hundred and sixty-two* and *thirty-two hundred and sixty-three* of the Revised Statutes, and in case of such increase, either by preferred or common stock, the stockholders of such company at the time of such increase shall each be entitled to a pro rata share of such increase of stock upon payment of the par value thereof; such right to such pro rata share of such increased stock shall, however, be forfeited by such stockholder who shall fail to pay the amount required of him for such pro rata share of the increased stock within thirty days after the time fixed by the trustees for such payment, by public notice in a newspaper published in the county in which the principal place of business of such company is located, and written or printed notice mailed to him.

Assignment and transfer of stock. The stockholders of such company shall have power to provide and determine, as they may

see fit, the conditions upon which the shares of stock of said company shall be assignable and transferable according to such rules and regulations and upon such conditions as the stockholders shall for that purpose make and establish, and not otherwise. 79 O. L. 101.

§ 3821c. Safe deposit and trust company may act as executor, administrator, assignee, guardian, etc.—Trust operations limited to county in which located—Limitation of powers—

Companies organized under the acts to which this is supplementary, and engaged in the business of safe deposit and trust companies, in addition to the powers already possessed, shall have the power to take, accept and execute all such trusts of every description as may be committed to such company by any person or persons, or any corporation by grant, assignment, devise or bequest, or which may be committed or transferred to, or vested in, said company, whether the same be to act as executor, administrator, assignee, guardian, receiver or trustee, or in any other trust capacity, by order of any court of record or probate court, in the county in which such company is located, and its principal business is transacted, or of any court of record or probate court of any other state, or of the United States, to receive and take any real estate which may be the subject of any such trust, and to act as agent under any power. Provided any such appointment as guardian shall apply to the estate only, and not to the person. 91 O. L. 255.

§ 3821d. Liability—Additional security—Required paid-up capital—Deposit with treasurer of state—

The capital of such companies shall, with all their property and effects, be absolutely liable in case of any default whatever in any of the trust positions aforesaid and shall, together with the statutory liability of the stockholders, be taken, and considered as the only security required by law, and such companies shall not be required to give in any trust capacity any other bond, security, oath or undertaking. The probate judge may, at any time he deems proper, require additional security in any amount he may think necessary. Provided, however, that no such company whose principal place of business is in a city of the

first class or in a city of the first grade of the second class or in a city not of the second grade of the second class which by the last preceding federal census had a population of thirty-three thousand or more, shall accept any trusts which may be vested in, transferred or committed to it by any individual or by any court of record, as provided in section 3821c, until the capital stock of said company shall amount to two hundred thousand dollars, fully paid up, and until such company shall have deposited with the treasurer of the state one hundred thousand dollars in cash, or in securities in which said company is by law allowed to invest its capital; and provided that no such company whose principal place of business is in a city of the second class, which city by the last preceding federal census had a population of less than thirty-three thousand shall accept any trusts which may be vested in, transferred or committed to it by any individual or by any court of record, as provided in section 3821c, until the capital stock of said company shall amount to fifty thousand dollars, fully paid up, and until such company shall have deposited with the treasurer of state twenty-five thousand dollars in cash, or in securities in which said company is by law allowed to invest its capital; provided, the full amount of such deposit so to be made by any such company may be made in bonds of the United States or State of Ohio; the treasurer of state shall hold such fund or securities deposited with him as security for the faithful performance of all the trusts assumed by said company, but so long as any such company shall continue solvent, said treasurer shall permit it to collect the interest of or dividends on its securities so deposited, and from time to time to withdraw such securities or cash, or any part thereof, on depositing with him cash, or other securities of the kind heretofore named, so as to maintain the value of said deposit as hereinbefore provided. 94 O. L. 132.

§ 3821e. Examination of company—

Any judge of the court in which any such company is acting in such trust capacity, may, if he deem it necessary, or upon the written application of any party interested in the estate which such company holds in any trust capacity, at any time, appoint a suitable person or persons, who shall investigate the affairs and management of such company concerning said trust, and make sworn report to such court of such investigation; the expense of

such investigation shall be defrayed by the party asking such examination; and any such court may, at any time, examine any officer or officers of such company, under oath or affirmation as to the company's trust matters in such court, or as it to its finances and management while considering its appointment in any such capacity; and such court may, for any cause applicable to natural persons in the same capacity, order that said company shall forthwith settle its trust in said court. 88 O. L. 407.

§ 3821f. Provisions applicable to probate courts in certain counties—

The provisions of sections 3821c, 3821d, and 3821e, relating to the power of the probate judge to appoint any such company to act as executor, administrator, assignee, guardian, receiver, or trustee, shall apply to probate courts in all counties containing a city of the first class, and to all probate courts in counties containing a city of the second class, containing by the last preceding federal census a population of less than 33,000. 94 O. L. 132.

§ 3821g. Loans on or investments in stocks—

Any safe deposit and trust company organized under the acts to which this is supplementary, and engaged (exclusively) in the business of a safe deposit and trust company, may loan or invest any moneys or properties received in trust by such company, together with the capital of such company, in the following securities, in addition to those now authorized by law, *i. e.*, in the stock or [of] gas light and coke companies, gas companies, gas and electric light companies, or stocks of street railway companies which have paid regular dividends on their stock for five years next preceding such loan or investment, and are located in the county in which such safe deposit and trust company is located, or in which it has its principal office; provided, however, that no investment of any moneys or properties held in trust by any such company, or investment of any part of the capital of any such safe deposit and trust company, shall be made in the stock of any such gas light and coke company, gas company, gas and electric light company, or street railway company, unless authorized by the board of directors of such safe deposit and trust company by resolution entered upon its minutes; and provided further, that not more than ten per centum of the capital of any such safe deposit and

trust company shall be invested or loaned in any one security or loan. 91 O. L. 201.

§ 3821gg. May exercise powers of safe deposit and trust company when having requisite capital in Toledo and Columbus, etc.—

That any company now or hereafter incorporated under the laws of the state of Ohio, as a savings and loan association, and having a paid up capital stock of not less than two hundred thousand dollars, and organized and doing business in any city of the third grade of the first class, or first grade of the second class, may also engage in business as a safe deposit and trust company, under and in accordance with the provisions of sections 3821a, 3821b, 3821c, 3821d, 3821e, 3821g, of the Revised Statutes of Ohio. Provided, however, that no such company shall be authorized to engage in business as such safe deposit and trust company, until after the holders of at least two-thirds in amount, of the capital stock of such company shall have voted in favor of so doing, at a meeting of the stockholders called for the purpose of considering such question. Upon the stockholders of any such company voting in favor of a resolution to engage in business as a safe deposit and trust company, as provided in this act, the president and secretary of such corporation shall make, and file with the secretary of state a certificate under the seal of such corporation, showing the action of the stockholders in this behalf, and the number of shares voted in favor of the proposition, and thereupon such corporation shall have all the powers, and be subject to all the regulations, obligations, liabilities, and conditions which safe deposit and trust companies have and are subject to, under the several sections of the Revised Statutes to which this act is supplemental. 94 O. L. 340.

(§ 3821h.) Sec. 1. Collateral loan companies; their object—

In all counties, containing a city of the second grade of the first class, any number of persons not less than seven, may associate and form a collateral loan company in the manner prescribed by the revised statutes. The object of such association shall be to make loans upon pledges of goods and chattels of every kind; also, on mortgage on goods and chattels; it shall not do a deposit or exchange business, nor shall it make loans upon any other kind of securities than that above named. 82 O. L. 132.

(§ 3821i.) **Sec. 2. Capital stock; power to borrow—**

The capital of said company shall be raised by subscription. It shall not exceed five hundred thousand dollars, in shares of fifty dollars each; and no one person shall own more than one-seventh of the stock subscribed. It shall have the power to borrow on its own notes, not exceeding the amount of its capital paid in, and for periods not exceeding one year. 83 O. L. 144.

(§ 3821j.) **Sec. 3. Board of directors, officers, by-laws—**

The government of the company shall be in a board of seven directors, who shall be residents of the county where the association is located, five of whom shall be chosen annually by the stockholders, together with one to be appointed by the governor of the state, and one to be appointed by the mayor of the city where such company may be located, whose term of office shall also be for one year. The board thus created shall elect one of their number president, and such other officers as may be deemed necessary. Said directors may also establish such by-laws, rules and regulations for conducting the business of said company as they may deem necessary, not inconsistent with the laws of this state. 82 O. L. 132.

(§ 3821k.) **Sec. 4. Organization—**

When twenty thousand dollars have been duly subscribed, and one-fourth of said subscribed capital has been actually paid in, the stockholders may organize, as hereinbefore provided, and proceed to transact business under the provision of this act. 83 O. L. 144.

(§ 3821l.) **Sec. 5. Loans; rate of interest, etc.—**

When the company has disposable funds, it shall loan on all goods and chattels offered, embraced within its rules and regulations, in the order in which they are offered; with the exception that the company shall always discriminate in favor of small loans to the indigent. It shall loan four-fifths of the appraised value on gold and silver plate and ware, and to two thirds of such value on all other goods and chattels as aforesaid. In no case shall the rate of interest charged exceed eight per cent per annum, and any other charges, including insurance, investigation of titles,

and the expense of the custody and care of all property offered as security, shall not exceed ten per cent per annum on the amount loaned. 83 O. L. 144.

(§ 3821m.) Sec. 6. Maturity of loans; right to redeem—

All loans shall be on a time fixed, and for a period of not over one year; and the pledger shall have the right to redeem his property pledged, at any time, within the specified period, at the rate of compensation to the time of offer to redeem. 82 O. L. 132.

(§ 3821n.) Sec. 7. Sale of unredeemed property; proceeds; pawn tickets—

If the property pledged is not redeemed within the time limited, the same shall be sold at auction, and the net surplus, after paying loan charges and expenses, shall be held one year for the owner; when, if not demanded within said year, it shall be forfeited to the company. The company shall give to each pledger, a card inscribed with the name of the company, the article or articles pledged, name of the pledger, the amount of the loan, the rate of compensation, the date when made, the date when payable, and the page of the book where recorded. 82 O. L. 132.

(§ 3821o.) Sec. 8. Reports of company's business—

The president and directors of said company shall report in writing, to the stockholders and to the governor of the state, full and accurate statistics of its business, and of its financial condition, in the month of November, in each year, and at such other times as they may be requested to do so by the governor of the state. 82 O. L. 132.

(§ 3821p.) Sec. 9. Transfers of stock—

The stock of said company shall be transferable only at the office of said company, and on its books. 82 O. L. 132.

(§ 3821q.) Sec. 10. Applicability of statutes to stockholders—

The stockholders of said corporations shall be subject to the provisions of section 3258 of the Revised Statutes of Ohio, and to

all other provisions of the Revised Statutes, where applicable.
82 O. L. 132.

To provide for the better protection of persons dealing with bond and investment companies.*

**(§ 3821r.) Sec. 1. Bonds investment companies—Must
make deposit upon commencing business—
Deposit by companies already in operation
in Ohio—Minimum of deposit—Purpose—**

Every corporation, partnership and association, other than a building and loan company, which shall hereafter commence, in this state, the business of placing or selling certificates, bonds, debentures, or other investment securities of any kind or description, on the partial payment or installment plan, and every investment guaranty company doing business on the service dividend plan, shall, before doing business in Ohio, deposit with the state treasurer one hundred thousand dollars in cash or bonds of the United States, or of the State of Ohio, or of any county or municipal corporation in the State of Ohio, for the protection of the investors in such certificates, debentures or other investment securities. Such deposit of one hundred thousand dollars shall be made out of the paid-up capital stock of such corporation, partnership or association. And every corporation, partnership or association now doing business in the State of Ohio shall, in addition to the amount now on deposit with the state treasurer by such corporation, partnership or association, on or before the 10th day of January of each year, deposit with the state treasurer, either in cash, or bonds of the United States, or of the State of Ohio, or of any county or municipal corporation in the State of Ohio, an amount equal to ten per cent of the gross receipts on the amount of business done by it in the State of Ohio for the twelve months next preceding the 31st day of December; and the said deposit shall be made each year as aforesaid until the total amount of such cash or bonds so deposited shall amount to one hundred thousand dollars. Provided, every such corporation, partnership or association now doing such business in the State of Ohio shall have on deposit with the state treasurer not less than twenty-five thousand dollars out of its paid-up capital

* This act replaces an act in 93 v. 401, which was construed in *Shaw v. Interstate Corporation*, 5 N. P. 411 (Sup. Ct. Cin.).

Corporations amenable to act. *State v. Diamond Contract Co.*, 43 B. 407 (Sup. Ct.).

stock. The deposit made with the treasurer shall be held as a security for all claims of residents of this state against such corporation, partnership or association, and shall be liable for all judgments or decrees thereon, and subjected to the payment of the same in the same manner as the property of other non-residents. Should any such corporation, partnership or association cease to do business in this state, the treasurer may release securities in his discretion, retaining sufficient to satisfy all outstanding liabilities. 94 O. L. 147.

The \$25,000 deposit need not be derived wholly from the capital stock. State v. Supt. Ins., 43 B. 221.

(§ 3821s.) Sec. 2. Conditions precedent to doing business—Copy of charter—Statement of business of preceding year—Process—

Every such corporation, partnership or association shall, as a condition precedent to transacting business in this state, comply with the following conditions, to wit:

First. It shall file with the supervisor of bond investment companies, a certified copy of its charter or articles of incorporation, constitution and by-laws, and other rules and regulations showing its manner of conducting business.

Second. It shall also file with the supervisor a statement under oath of the president and secretary or other managing officer in the form by the supervisor required, of its business for the preceding year.

Third. It shall also file with the supervisor a written instrument, duly executed, agreeing that a summons may issue against it from any county in this state directed to the sheriff of the county in which the office of supervisor is situate, commanding him to serve the same by certified copy personally upon the supervisor or by leaving a copy thereof at his office. The supervisor shall, however, mail a copy of any papers served on him, postage prepaid, to the home office of such corporation, partnership or association. 94 O. L. 147.

(§ 3821t) Sec. 3. Certificate of authority—Revocation—

Whenever such company, partnership or association has complied with the provisions of this act, and the supervisor is satisfied that it is doing business in accordance with law, he shall issue to such company, partnership or association a certificate of

authority to do business in Ohio. Annually thereafter, upon the filing of the annual statement herein provided for, if the supervisor shall be satisfied as aforesaid, he shall issue a renewal of such certificate of authority. And said authority shall be revoked whenever the supervisor on investigation or examination finds that such company, partnership or association is not transacting business in accordance with law, or that the statement of its condition and affairs required under the provisions of this act are false and fraudulent, or for failure to file the annual statement. 94 O. L. 147.

(§ 3821u.) Sec. 4. Interest on securities deposited—

Every such company, partnership or association may collect and use the interest of any securities so deposited, so long as it fulfills its obligations and complies with the provisions of this act. It may also exchange them for other securities of equal value and satisfactory to the treasurer. 94 O. L. 147.

(§ 3821v.) Sec. 5. Agents to be licensed—

It shall be unlawful for any agent of every such company, partnership or association to transact business in this state without being first regularly appointed thereby and being licensed by a certificate of authority issued by the supervisor. 94 O. L. 147.

**(§ 3821w.) Sec. 6. Annual statement of business—Fees—
When proceedings to be instituted against
company—**

Every such corporation, partnership and association doing business in this state shall, annually hereafter, and on or before the tenth day of January, file with the supervisor under oath of the president and secretary, or other managing officer, in the form by said supervisor required, a statement of its business for the twelve months next preceding the thirty-first day of December. Such abstract thereof as the supervisor may require shall be posted for sixty days in the principal office of such company, partnership or association, and also published in some newspaper having a general circulation in the county in which the principal office or place of business of such company, partnership or association is situate. And the said supervisor shall verify said report by an examination of the affairs of said company, partner-

ship or association, and he may make quarterly examinations of the affairs of said company, partnership or association, if he deem the same necessary, and he shall receive as fees for the same the sum of ten dollars per day and necessary expenses for the actual time employed in making such examination, which shall be paid by the company, partnership or association examined; and if, upon such examination, it shall appear that such company, partnership or association is not carrying on its business in accordance with law, or that its affairs are being improperly managed, the supervisor, after notice to such company, partnership or association of at least ten days, shall institute proceedings in quo warranto against said company, partnership or association in the manner provided by law. 94 O. L. 147.

(§ 3821x.) Sec. 7. Supervisor of companies; duty and compensation—Deputy—

The acting and deputy inspector of building and loan associations is hereby made ex-officio supervisor of bond investment companies. It shall be his duty to see that all the laws of this state relating to such companies, partnerships or associations are faithfully executed, and as compensation for his services as such supervisor he shall receive the sum of twelve hundred dollars per year. The supervisor may appoint a deputy, who shall be authorized to perform the duties attached by law to the office of supervisor, during his absence or disability, and shall receive a salary of nine hundred dollars per year. He shall also appoint such other clerks or examiners as may be provided for by law. 94 O. L. 147.

(§ 3821y.) Sec. 8. Fees—

Every such company, partnership or association shall pay to the supervisor the following fees, which shall be paid into the state treasury, to wit: For filing each application for admission to do business in this state, one hundred dollars; for each certificate of authority, and annual renewal of same, fifty dollars; for filing each annual statement, twenty-five dollars; for issuing license to each agent, two dollars; for each copy of paper filed in his office, fifty cents per folio; for affixing seal and certifying any paper, one dollar. Provided, however, that the supervisor may retain from the fees so received by him up to the close of the fiscal year ending February 15, 1902, a sum sufficient to pay

the salaries and necessary expenses provided for in this act up to said time. 94 O. L. 147.

(§ 3821z.) Sec. 9. Penalty—

Any officer, agent or representative of any such company, partnership or association who shall attempt to place or sell any certificates, debentures or other investment securities or transact any business whatsoever in the name of or on behalf of such company, partnership or association when such company, partnership or association has failed or refused to comply with the provisions of this act, or shall fail to file with the supervisor of bond investment companies the statement or report herein provided to be filed, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense, or be imprisoned in the county jail for not less than thirty days nor more than six months, or both. 94 O. L. 147.

***FREE BANKING.**

An act to authorize free banking, passed March 21, 1851, 49 v. 41.

(§3821-64.) Sec. 1. Who may engage in banking—

Any number of natural persons, not less than three, may engage in the business of banking, with all the rights, privileges, and powers conferred by and subject to the restrictions of this act.

Banks—How Established.

(§ 3821-65.) Sec. 2. Certificate to be made—Copy to be deposited with secretary of state—

Persons associating to form a banking company shall, under their hands and seals, make a certificate, which shall specify:

First. The name assumed by such company, and by which it shall be known in its dealings; also, the name of the place where its banking operations shall be carried on, at which place such banking company shall keep an office for the transaction of business, and for the redemption of its circulating notes.

Second. The amount of the capital stock of such company, and the number of shares into which the same is divided.

* For repeal of statute to incorporate the State Bank and acts relating thereto, see 91 O. L. 396. For reference to old statutes relating to unauthorized banking, see memoranda of sections 3821-1 to 63 in beginning of book.

Third. The name and place of residence, and the number of shares held by each member of the company.

Fourth. The time when such company shall have been formed. Such certificate shall be acknowledged before a justice of the peace or notary public, and shall be recorded by the recorder of the county where such company is to be established, in a book to be kept by him for that purpose, which shall, at all times during office hours, be kept open for inspection of any person wishing to examine the same; and a copy of said record, duly certified, shall be by the recorder transmitted to the secretary of state, who shall record and carefully preserve the same in his office; copies thereof, duly certified by either of those officers, may be used as evidence in all courts and places, for and against any such company, and shall be conclusive evidence of the legal existence of such banking company.

(§ 3821-66.) Sec. 3. Capital stock—

The capital stock of each company hereby authorized, exclusive of the securities of such company, deposited with the auditor of state for the redemption of the notes of circulation of such company, shall be at least twenty-five thousand dollars, and shall not exceed five hundred thousand dollars; and any such company may, from time to time, increase its capital stock to any amount not exceeding five hundred thousand dollars.

(§ 3821-67.) Sec. 4. Sixty per cent of stock to be paid in—

Every such banking company, before commencing business, shall have paid in and remaining in its possession, bona fide, the property of such company, for the sole purposes of such company, sixty per centum of its entire capital stock, and the residue shall be paid in in such installments as may be required by the directors of any such company.

(§ 3821-68.) Sec. 5. Governor, auditor, and secretary of state to furnish company a certificate—

Whenever any company herein authorized shall furnish to the auditor, governor, and secretary of state satisfactory evidence that such company has complied with the preceding sections of this act, said auditor, governor, and secretary shall furnish to such company a certificate of such fact, under their hands and

under the great seal of the state, which shall be recorded in the office of the secretary of state, in the same book in which is required to be recorded the certificate provided for in the second section of this act.

Secs. 6, 7, 8, and 9.

[Repealed, April 24, 1879. 76 v. 72.]

(§ 3821-69.) Sec. 10. Powers of the company—

Every company formed under this act, after having procured the certificate required in the fifth section of this act, shall be, and hereby is created a body politic and corporate, with succession, until the year eighteen hundred and seventy-two, and thereafter, until the repeal of this act; and by its name shall have power to contract, and to prosecute and defend suits and actions of every description, as fully as natural persons; to loan money, buy, sell, and discount bills of exchange, notes, and all other written evidences of debt, except such as may be herein prohibited; to receive deposits, buy and sell gold and silver coin and bullion, collect and pay over money, and transact all other business properly appertaining to banking, subject to the provisions and restrictions of this act; may acquire, hold, and convey such real estate as may be necessary to the convenient transaction of its business, and no more; but may, however, acquire title to any real estate pledged to secure any debt previously contracted or purchased on an execution or order of sale, to satisfy any judgment or decree in its favor, or which shall have been conveyed to it in payment of any previous debt; but shall not hold any real estate, so acquired, longer than is necessary to avoid a loss of any part of the debt, interest, and costs for the collection or security of which it was acquired; but at any time before selling the same, upon being tendered by the last preceding owner, or his legal representative, such sum as shall be necessary to save such company from loss of any part of the debt, interest, taxes, costs, and other necessary charges for the collection or security of which said real estate was acquired, such company shall release to such owner, his legal representative or assigns, all its right, title and interest therein.

(§ 3821-70.) Sec. 11. Stock to be personal property, etc.—

The capital stock of every company shall be divided into shares

of fifty dollars each, which shall be deemed personal property, and shall only be assignable on the books of the company in such a manner as its by-laws shall prescribe; each bank shall have a lien upon all stock owned by its debtors, and no stock shall be transferred without the consent of a majority of the directors, while the holder thereof is indebted to the company.

(§ 3821-71.) Sec. 12. No loan to be taken on capital stock—

No company shall take, as security for any loan or discount, a lien upon any part of its capital stock; but the same security, both in kind and amount, shall be required of shareholders as of persons not shareholders; and no banking company shall be the holder or purchaser of any portion of its capital stock, or of the capital stock of any other incorporated company, unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, on security which, at the time, was deemed adequate to insure the payment of such debt, independent of any lien upon such stock; and stock so purchased shall in no case be held by the company so purchasing, for a longer period of time than six months, if the same can be sold for what the stock cost at par.

A bank organized under this act cannot demand the transfer to it, on the books of another bank, of stock, in the latter, held by the former as collateral security for a loan. *Franklin Bk. v. Commercial Bk.*, 36 Ohio St. 350.

(§ 3821-72.) Sec. 13. Who may vote at election—

In all elections of directors, and in deciding all questions at meetings of the stockholders, each share shall entitle the owner thereof to one vote; stockholders may vote by proxies, duly authorized in writing, but no officer, clerk, teller, or bookkeeper of the company, shall act as proxy.

(§ 3821-73.) Sec. 14. Officers—Who eligible—

The affairs of every company formed and organized to carry on the business of banking under the provisions of this act, shall be managed by not less than three (3) nor more than nine (9) directors, as may be determined by a majority in interest of the stockholders; every director shall, during the whole term of his service, be a resident of the state; at least three-fourths of the directors shall have resided in this state two (2) years next pre-

vious to their election as directors; the directors of each banking company, collectively, shall own at least one-tenth of the capital stock; each director shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of the company, and not knowingly violate, or willingly permit to be violated, any of the provisions of this act; that he is the bona fide owner, in his own right, of the stock, specifying the amount standing in his name on the books of the company, and that the same is not hypothecated or in any way pledged as security for any loan obtained or debt owing, which oath, subscribed by himself and certified by the officer before whom it was taken, shall be filed and carefully preserved in the office of the recorder of the county in which the banking company is located. 87 O. L. 208.

Officers who engage in the business authorized by this act, before the required securities are deposited, are personally liable for debts contracted. *Medill v. Collier*, 16 Ohio St. 599. See also *Ridenour v. Mayo*, 40 Ohio St. 9.

(§ 3821-74.) Sec. 15. Term of office of directors—

The directors of any banking company first elected, shall hold their places until the first Monday in January next thereafter, and until their successors shall be elected and qualified; all subsequent elections shall be held annually, on the first Monday of January, at the office of the bank, and the directors so elected shall hold their place for one year, and until their successors are elected and qualified; but any director removing from the state shall thereby vacate his place; any vacancy in the board shall be filled by appointment, by the remaining directors; the director so appointed shall hold his place until the next annual election, and if, from any cause, an election of directors shall not be made at the time appointed, the company shall not, for that cause, be dissolved, but an election may be held on any subsequent day, thirty days' notice thereof having been given in a newspaper printed and in general circulation in the county where the company is located.

Sec. 16.

[Repealed April 24, 1879. 76 v. 72.]

(§ 3821-75.) Sec. 17. Banking companies shall not circulate evidences of debt as money—

No banking company, either heretofore or hereafter organized under this law, shall at any time issue, or have in circulation, any note, draft, bill of exchange, acceptance, certificate of deposit, or any other evidence of debt which, from its character, form, or appearance, shall be calculated or intended to circulate as money; and every violation of this section, by any officer or member of a banking company, shall be deemed and judged a misdemeanor, punished by fine or imprisonment, or both, in the discretion of the court having cognizance thereof, as now provided by law. 76 O. L. 72.

Sec. 18.

[Repealed April 24, 1879. 76 v. 72.]

**(§ 3821-76.) Sec. 19. When prohibited from making loans—
When bonds are equivalent to lawful money—**

Each banking company shall at all times have on hand, of lawful money of the United States, an amount equal to at least twenty per centum of its deposits; and whenever the lawful money of any company shall fall below twenty per cent of its deposits, such company shall not make any new loan or discount, otherwise than by discounting or purchasing bills of exchange payable at sight, nor make any dividends of its profits, until the required proportion of its deposits, and its lawful money of the United States, shall be restored; and for such purpose money actually invested in bonds of the United States shall be deemed equivalent to lawful money of the United States. 76 O. L. 72.

(§ 3821-77.) Sec. 20. Not liable for more than amount of capital stock—Exceptions—

No banking company herein authorized shall at any time be indebted, or in any way liable, to an amount exceeding the amount of the capital stock at such time actually paid in and remaining as capital stock, undiminished by losses or otherwise, except on the following accounts:

First. On account of moneys deposited with or collected by such company.

Second. On account of bills of exchange or drafts drawn against

money actually paid on deposit to the credit of or due to such company.

Third. Liabilities of its stockholders on account of moneys paid in as capital stock, and dividends thereon, and such stockholders shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum at least equal in amount to such stock. 76 O. L. 72.

Sec. 21.

[Repealed April 24, 1879. 76 v. 72.]

(§ 3821-78.) Sec. 22. Capital stock not to be withdrawn—

No banking company shall, during the time it shall continue its operations as a bank, withdraw or permit to be withdrawn, either in form of dividends, loans to stockholders, for a longer period of time than six months, or in any other manner, any portion of its capital stock, and if losses shall at any time have been sustained by any banking company, equal to, or exceeding its undivided profits then on hand, no dividends shall be made, and no dividend shall ever be made by any banking company, while it shall continue its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses, bad and suspended debts, and all debts due to a banking company, on which interest is past due and unpaid for a period of six months, unless the same shall be well secured, and shall be in process of collection, shall be considered bad or suspended debts within the meaning of this act.

(§ 3821-79.) Sec. 23. How declare dividend—Shall report semi-annually to auditor of state—

The directors of each banking company shall, semi-annually, declare a dividend of so much of the net profits of the company as they shall judge expedient; but such company shall, before the declaration of a dividend, carry one-tenth part of its net profit of the preceding half year to its surplus fund, until the same shall amount to twenty per centum of its capital stock; every banking company shall make to the auditor of state a report, according to the form which may be prescribed by him, verified by the oath of the president or cashier of such company; which report shall exhibit in detail, and under appropriate heads such as he shall

require, the resources and liabilities of the company before the commencement of business in the morning of the first Monday of the months of January and July of each year, and shall transmit the same to the auditor of state within ten days thereafter. 76 O. L. 72.

Sec. 24.

[Repealed April 28, 1873. 70 v. 178.]

(§ 3821-80.) Sec. 25. Liabilities specified—Proviso—

The total liabilities of any person, company, corporation, or firm, for money borrowed, including in the liabilities of the several members thereof to any banking company herein authorized, shall at no time exceed one-tenth part of the amount of the capital stock of such company actually paid in: provided, that the discount of bona fide bills of exchange drawn against actually existing values, and the discount of commercial or business paper actually owned by the person or persons, corporation or firm negotiating the same, shall not be considered money borrowed. 76 O. L. 72.

(§ 3821-81.) Sec. 26. Uncurrent notes not to be paid out—

No banking company shall, at any time, pay out on loans or discounts, or in purchasing of drafts or bills of exchange, or in payment of depositors; nor shall it in any other mode, put in circulation the notes of any bank or banking company, either in or out of this state, which notes shall not at that time be receivable at par, in payment of debts, and by the company so paying out or circulating such notes; nor shall it knowingly pay out or put in circulation any notes, issued by any bank or banking company, which, at the time of such paying out or putting in circulation, is not redeeming its notes in gold and silver, nor any notes issued by any bank out of this state, of a denomination less than five dollars.

(§ 3821-82.) Sec. 27. Notes, etc., to whom payable—

All notes, bills, and other evidences of debt, excepting bills of exchange, discounted by any banking company, shall be made by the terms thereof, or by special indorsement, payable solely to such company; and no such evidence of debt shall be assignable, except for collection, or for the following purposes: First—to

pay and redeem the circulating notes of such company; Second—To pay other liabilities of the said company; and after such liabilities shall have been discharged, Third—To divide among the shareholders on their stock.

(§ 3821-83.) Sec. 28. What transactions are void—

All transfers of notes, bonds, bills of exchange, and other evidences of debt, owing to any banking company, or of deposits to its credit; all assignments or mortgages, or other securities on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its stockholders or creditors; all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, with a view to prevent the application of its assets in the manner prescribed by this act, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be held utterly null and void.

(§ 3821-84.) Sec. 29. Penalty for violation of provisions of this act—

If the directors of any banking company which shall have availed itself of any of the privileges granted by this act, shall knowingly violate, or knowingly permit any of the officers, agents, or servants, of such company, to violate any of the provisions of this act, all the rights, privileges, and franchises of said company, derived from this act, shall thereby be forfeited; such violation, shall, however, be determined and adjudged by a court of competent jurisdiction, agreeably to the laws of this state, and the practice of such court, before the corporation shall be declared dissolved; and in case of such violation, every director who participated in or assented to the same, shall be held liable, in his personal and individual capacity, for all damages which the company, its shareholders, or any other persons, body politic or corporate, shall have sustained in consequence of such violation.

(§ 3821-85.) Sec. 30. Relating to embezzlement, etc., by bank officers, employees, and agents—Penalty—

Every president, director, cashier, teller, clerk, or agent of any banking company, who shall embezzle, abstract, or willfully mis-

apply any of the moneys, funds, or credits of such company, or shall, without authority from the directors, issue or put forth and certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any notes, bonds, drafts, or bills of exchange, mortgage, judgment, or decree, or shall make any false entry in any book, report, or statement of the company, with intent in either case to injure or defraud the company, or any other company, body politic or corporate, or any individual person; or to deceive any officer of the company, or any agent appointed to inspect the affairs of any banking company in this state, shall be guilty of an offense, and upon conviction thereof, shall be confined in the penitentiary, at hard labor, not less than one year, nor more than ten years. 76 O. L. 72.

Secs. 31, 32, 33, 34, 35, 36 and 37.

[Repealed April 24, 1879. 76 v. 72.]

(§ 3821-86.) Sec. 38. No dividends to be made when capital stock is diminished—

If the original capital stock of any of such banking companies shall in any manner be diminished, or any portion thereof be withdrawn for any purpose whatever, while any debts or demands against such company remain unsatisfied, no dividends shall thereafter be made on the shares of the capital stock of such company, until the original amount of the capital stock shall be restored, either by contribution of the shareholders, or out of the profits of the business of such company; and in case any dividend shall be made while the capital stock shall remain so diminished or withdrawn, it shall be the duty of any court, having competent jurisdiction, to make the necessary orders and decree for closing the affairs of such company, and dividing its effects among its creditors and shareholders, as in this act provided.

Sec. 39.

[Repealed April 24, 1879. 76 v. 72.]

(§ 3821-87.) Sec. 40. Stockholders shall not be liable to bank beyond two-fifths of capital stock—

The stockholders collectively, of any banking company, shall at no time be liable to such company, either as principal debtors or sureties, or both, to an amount greater than two-fifths of the

amount of capital stock actually paid in and remaining undiminished by losses or otherwise, nor shall the directors be so liable by the by-laws of such company, adopted by its stockholders to regulate such liabilities; and it shall be the duty of the auditor, treasurer, and secretary of state, or a majority of them, as often as once in each year, to appoint some suitable person in the vicinity of each banking company, who shall not be a stockholder in any bank of this state, who shall have power to make a thorough examination into all the affairs of the bank which he may be appointed to examine; and, in so doing, to examine any of the officers and agents of such bank on oath; and such agent shall make a detailed report of the condition of such bank to the auditor of state; and the banking companies herein authorized shall be subject to any other visitatorial powers authorized by law; and every agent appointed, as in this section provided, shall receive for his services at the rate of two dollars for each day by him employed in such examination, and two dollars for every twenty-five miles he shall necessarily travel, in the performance of his duty, which shall be paid by the banking company by him examined.

Secs. 41, 42.

[Repealed April 24, 1879. 76 v. 72.]

(§ 3821-87.) Sec. 43. List of shareholders and amount of stock to be kept and filed with recorder of county—

The president and cashier of every company, formed pursuant to the provisions of this act, shall, at all times, keep a true and correct list of the names of all the shareholders of such company, and the amount of stock owned by each, and shall file a copy of such list, in the office of the recorder of the county where any office of such company may be located, and also in the office of such company, and also in the office of the auditor of state, in the months of January and July in every year.

Secs. 44, 45, 46.

[Repealed April 24, 1879. 76 v. 72.]

(§ 3821-87.) Sec. 47. Conflicting laws repealed—

All laws now in force, which are applicable to the banking

companies herein authorized, and which conflict with the provisions of this act, are repealed, so far as the same may be applicable to the banking companies herein authorized.

(§ 3821-88.) Sec. 1. Surrender of securities—

All independent and free banking companies, and the State Bank of Ohio and its branches, and their assignees and successors, respectively, organized under the provisions of an act entitled "An Act to incorporate the State Bank of Ohio and other banking companies," and an act entitled "An Act to authorize free banking," and having complied with the provisions for relinquishing business required by the above-recited acts, and having redeemed at least ninety-five per cent of their authorized circulation, may, on or after the first day of January, eighteen hundred and eighty (1880), demand of the auditor of state, and said auditor is hereby authorized and required to relinquish to such companies on such demand any bonds or securities he may hold as security for the redemption of any outstanding circulating notes of such companies, and thereafter the affairs of such companies shall be considered closed; provided, that nothing herein shall be so construed as to excuse the redemption of all of said circulation that may be presented for redemption prior to the first day of January, 1880. 72 O. L. 54.

(§ 3821-89.) Sec. 1. Annual report of unknown depositors—

Every incorporated bank or banking association located in this state, whether now or hereafter incorporated or organized under the laws of this state, or of the United States, and every company, association, or person, who shall in this state keep an office or other place of business, and engage in the business of lending money, receiving money on deposit, buying and selling bullion, or bills of exchange, notes, bonds, stocks, or other evidence of indebtedness, with a view to profit, shall, annually, between the first and second Mondays of January, make out and return to the probate judge of the county in which said bank, office, or other place of business, is located, under oath of the owner, or principal officer or manager thereof, a true and complete statement, setting forth, in alphabetical order, the names of all unknown depositors with said bank, company, association, or person, together with the amount due to every such unknown

depositor, including accrued interest and dividends. 85 O. L. 65.

(§ 3821-90.) Sec. 2. Who are "unknown depositors"—

Every corporation, company, association, or person, in whose name a deposit of any money, bullion, bill of exchange, note, stock, bond, or other evidence of indebtedness, has been made with any bank, company, association, or person, designated in the first section hereof, shall be deemed an unknown depositor within the meaning of this act, when the date of the last bona fide item of debt or credit to the account of such depositor on the books of said bank shall be more than seven years prior to the time fixed by the first section hereof for the filing of said statement with the probate court of the proper county; provided, that in fixing the date of the last item of credit to the account of any depositor, reference shall not be had to any item of credit for interest or dividends accrued on such deposit, unless the same shall be entered upon a pass-book presented by and returned to the depositor, or unless the depositor be a minor. 85 O. L. 65.

(§ 3821-91.) Sec. 3. Record to be kept by probate judge—

The probate judge of each county shall, on or before the third Monday of January, annually, cause to be recorded in a book kept for that purpose, entitled "record of unclaimed deposits in banks, — county, Ohio," and which shall at all times be open to public inspection, all statements returned to him for the preceding year under the provisions of this act, and said probate judge shall designate in said book at the head of each statement recorded therein, the name of the bank, company, association, or person by whom said statement is returned. The original statement returned to said probate judge shall be kept on file and preserved in his office. 85 O. L. 65.

**(§ 3821-92.) Sec. 4. His fees for making such record—
How paid—**

There shall be allowed and paid to the probate judge of each county, the sum of eight cents per hundred words, for all statements recorded by said probate judge under the provisions of this act; provided, that the cost of recording the names and amounts due to any depositors, by whom deposits shall be made as aforesaid after the passage of this act, and who shall there-

after become unknown within the meaning of this act, shall be paid to said probate judge by the bank, company, association, or person designated in section one hereof, at the time such annual statement is returned, and shall be by such bank, company, association, or person, deducted from the amount due such unknown depositor. 85 O. L. 65.

(§ 3821-93.) Sec. 5. Unknown deposits to be paid into county treasury—When—Such payment releases the bank's liability—

That whenever any corporation, company, association, or person, in whose name any deposit is hereafter made with any bank, company, association, or person designated in section one hereof, shall become unknown within the definition and meaning of this act, the amount due to such depositor shall be by such bank, company, association, or person, paid to the treasurer of the county in which such bank, company, or association is located, and shall be by said treasurer credited to the general fund of said county; provided, that such deposit shall not be paid to said treasurer until after the expiration of eight years from the date of the first statement, in which the name and amount due such unknown depositor shall be returned to the probate judge as hereinbefore provided; and the bank, corporation, association, or person so making such payment shall thereby be released from any claim, demand, or liability to pay the same or any part thereof to the depositor, his administrators, executors, or assigns. 85 O. L. 65.

(§ 3821-94.) Sec. 6. How and by whom such deposits may be reclaimed—

If at any time thereafter proof is made to the satisfaction of the probate court, or the county commissioners, of the right of any person or persons, by inheritance or otherwise, the said funds or any part of the same, so paid to the treasurer under the provisions of the preceding section, said court or commissioners shall certify the same to the county auditor, who shall thereupon draw a warrant on the treasurer of the county in favor of such claimant or claimants, or the legal representatives or duly authorized agent of such claimant or claimants, for the sum so paid into the treasury; provided, if any such person or persons become aggrieved by the decision, finding, or action of the probate

court or the county commissioners, such person or persons may appeal to the court of common pleas, by virtue of the provisions of the Revised Statutes of 1883, sections *eight hundred and ninety-six, sixty-four hundred and seven, sixty-four hundred and eight, sixty-four hundred and nine, and sixty-four hundred and ten*, respectively, and all acts amendatory and supplementary thereto, and said sections shall, so far as applicable, govern proceedings had under the provisions of this act. 85 O. L. 65.

(§ 3821-95.) **Sec. 7. Penalty for refusal or neglect—**

That every bank, company, association, or person designated in section one of this act, who shall neglect or refuse to comply with the provisions of this act, shall forfeit and pay five hundred dollars for every such offense. 85 O. L. 65.

(§ 3821-96.) **Sec. 8. Recovery and disposition of penalties—**

The penalty imposed by this act shall be recovered by action in the name of the State of Ohio, before any court of competent jurisdiction; and all penalties incurred under this act, when collected, shall be paid to the treasurer of the county in which the judgment is recovered for the same, and one-half thereof shall be by said treasurer credited to the general fund of said county, and one-half thereof shall be by him held for the use of the State of Ohio. 85 O. L. 65.

(§ 3821-97.) **Sec. 9. Who may sue—Duty of prosecuting attorney—**

The action provided by the eighth section hereof, for the recovery of penalties incurred under the provisions of this act, may be instituted and prosecuted to judgment by any citizen of the State of Ohio; and it is hereby made the duty of the prosecuting attorney of such county to institute and prosecute such action against every bank, company, association or person designated in the first section hereof, and located in said county, who shall fail to comply with the provisions of this act. 85 O. L. 65.

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§ 3822. Avenue companies in certain counties—

Companies may be incorporated in any county having not less than one hundred thousand inhabitants, for the purpose of constructing avenues in the counties where they are organized; such avenues shall be opened not more than one hundred feet in width, at least sixty feet of which shall be cleared of all obstructions, and not less than thirty feet shall be made an artificial road, composed of stone, gravel or other suitable material, well compacted together in such manner as to secure a firm and substantial road, and shall not be less than five miles in length; and they may enter upon and appropriate any lands for the use of such avenue after having obtained the written consent of a majority of the persons owning the lands sought to be appropriated, which consent shall be entered upon their records. 53 v. 46, § 12; S. & C. 343.

Acts restricted to Montgomery county will be found in 78 O. L. 103 and 82 O. L. 209.

§ 3823. Other turnpike companies—

A corporation created for the purpose of constructing and maintaining a free public avenue shall construct and maintain its avenue not less than fifty nor more than one hundred feet wide, of such materials as it may deem proper, and shall not charge toll of any kind for the use of its avenue by the public, but may make and enforce all necessary and reasonable regulations for the use and preservation of the same; and if, in laying out such avenue, it be necessary to enter upon and appropriate any lands or premises, the proceedings therefor shall be instituted and carried on in all respects as is provided by law for the appropriation of private property by municipal corporations. 76 v. 62, § 1.

§ 3824. When company may take tolls—

When any such company puts under contract five consecutive miles of any such avenue, and completes not less than two consecutive miles thereof to the acceptance of the county commissioners, or when the whole of any such avenue is completed to

such acceptance by any such company, the company may erect a toll-gate thereon for the collection of such tolls as turnpike and plank-road companies are allowed by law to collect; and when a company completes to such acceptance five consecutive miles of an avenue, it may erect thereon two toll-gates, at such places as in the opinion of the directors will best subserve the interest of the company, for the collection of tolls as above provided. 53 v. 46, § 3; S. & C. 343.

Owner of land abutting on such avenue may construct bridge from his land to the avenue and use latter like other travelers, but may not connect bridge with a private way and thereby permit the public to avoid the toll-gates; where bridge is so used and is built on the company's land, the company may remove it. A person having no *right whatever* over such private way, but simply using same without objection, cannot build such bridge. Cin. & Spring Grove Ave. Co. v. Bates, 2 C. C. 376.

§ 3825. When consent of authorities necessary—

When in laying out any such avenue it becomes necessary to run through or along the line of any village, the board of directors of the avenue company shall obtain the consent of the council of such village to the laying out of such avenue through or along the territory over which they have supervision or control. 53 v. 46, § 4; S. & C. 343.

§ 3826. Authorities may surrender road to company—

If, on application being made to the council of a village, they are of opinion that the public good demands the laying out of such avenue, they may give their written consent to the laying out and construction of the same, which shall have the force and effect of a full and complete release of all authority over the avenue within their corporate jurisdiction, and the directors may lay out and construct the avenue through the territory of such village, and control the same in all respects as though the village did not exist. 53 v. 46, § 5; S. & C. 343.

§ 3826a. Power to condemn avenues belonging to avenue companies within corporate limits—

Where avenue companies have been or may hereafter be organized, and have constructed and operated, or may hereafter construct and operate an avenue or avenues in a county containing a city of the first grade of the first class, the board of public improvements of such city of the first grade of the first

class, may, by resolution, declare it essential or necessary to the interests of said city that so much of any such avenue as may be within the corporate limits of the city should belong to the city for the purpose of a public street; and thereupon if the company owning such avenue and the board of public improvements of the city are unable to agree upon the amount of compensation to be paid for so much of said avenue as lies within the city, the board of public improvements of such city and the company owning such avenue may submit the question of the amount to be paid for so much of such avenue as lies within the limits of such city to arbitration in the following manner, to wit: The board of public improvements of such city to select one disinterested person, the company owning such avenue to select another disinterested person, and these two [to] select the third disinterested person to act arbitrators, and all such arbitrators shall be resident freeholders of such city; and the amount agreed upon by these three arbitrators shall be binding on both such city and such company; and in case the arbitrator appointed by the board of public improvements of such city and the arbitrator appointed by such company cannot agree upon a third arbitrator, or all three of such arbitrators fail to agree on the amount to be paid for so much of such avenue as lies within the city limits, or in case the board of public improvements of such city, or the company owning such avenue, refuse to submit to arbitration the question of the amount to be paid for such part of such avenue as lies within the limits of such city, then the board of public improvements of such city may proceed to condemn and appropriate so much of such avenue as lies within the city limits, for public purposes, in the same manner in which other property is condemned and appropriated by municipal corporations, except that the resolution of such board of public improvements deeming it necessary to condemn shall take the place and stand in lieu of the resolution of council required by sections 2234, 2235, and 2236, Revised Statutes of Ohio. 87 O. L. 241.

§ 3826b. Issue and sale of bonds—

When the amount of compensation to be paid for such avenue appropriated under the preceding section shall have been ascertained either by agreement of the parties, by decision of the arbitrators or by the verdict of a jury in the proceedings instituted for the purpose, a fund shall be provided for the payment of such compensation together with the costs and expenses of such pro-

ceedings as may have been had, by issuing the bonds of such city for the amount thus ascertained; and it shall be the duty of the board of public improvements of such city to issue said bonds. Said bonds shall be made payable at such time and shall bear interest at such rate not to exceed four (4) per centum per annum as said board of public improvements shall determine; said bonds shall be signed by the president of the board of public improvements and the mayor of such city, and be attested by the comptroller of such city, and shall be secured by a pledge of the faith of such city and a tax, which it shall be the duty of the council of said city annually to levy upon the taxable property of such city, and certify the same to the county auditor, upon a certificate to that effect from the trustees of the sinking fund of such city, as to the amount necessary to pay the interest thereon and to provide a sinking fund for the final redemption of said bonds. Said tax shall be in addition to the amount now authorized to be levied for municipal purposes. Said bonds shall be sold to the highest bidder by said board of public improvements at not less than their par value, after advertising the same for not less than four consecutive weeks on the same day of the week, in some newspaper of general circulation in said city. 87 O. L. 241.

§ 3827. Officers of board of trade, chamber of commerce, merchants' exchange, etc.—

The officers of an incorporated board of trade, chamber of commerce or merchants' exchange or other kindred association, shall consist of a president, two vice-presidents, treasurer, secretary, and not less than ten directors, all of whom shall be members of the association, and be engaged in business at, or residents of the city or town where it is established; they shall be elected by ballot at the annual meeting of the association, and shall hold their office for one year; unless said association shall, by its by-laws provide a longer term for all or any of said officers, and until their successors are elected and qualified; the officers thus elected, together with said directors, shall constitute the board of directors of such association; provided, however, that any such association may provide for the election of not less than ten directors, as aforesaid, and by its by-laws authorize said directors to elect a president, two vice-presidents, a treasurer and a secretary, and such additional directors as may be necessary to complete the maxi-

mum membership of the board, all of whom shall be members of said association; the officers thus elected, together with said directors, shall constitute the board of directors of such association; and all other officers, agents or committees deemed necessary for the interest of the association, shall be elected or appointed in such manner and with such powers as may be provided by the by-laws of the association. And in like manner said association may have the power to provide for the trial, suspension, fine or expulsion of any of its members by the board of directors constituted as hereinbefore provided. And said association may make provision for the relief and support of the families and dependents of deceased members. 91 O. L. 108.

An inspector of tobacco appointed by a corporation under this section does not usurp the duties of inspectors under Chap. 6, Title V of the Revised Statutes. *State v. Casey*, 38 Ohio St. 555.

§ 3828. May appoint committees of arbitration—

Such corporations may constitute and appoint committees of reference and arbitration, and committees of appeals, who shall be governed by such rules and regulations as may be prescribed in rules or by-laws for the settlement of such matters of reference as may be voluntarily submitted for arbitration by members of the association, or by other persons not members thereof. 63 v. 89, § 5; S. & C. 183.

§ 3829. May require bonds from officers—

Such corporations may receive and require of and from their officers, whether elected or appointed, good and sufficient bonds for the faithful discharge of their duties and trusts, which bonds shall be conditioned and made payable as prescribed by the by-laws of the corporations, and may be sued [on], and the money collected and held for the use of the party injured, or such other use as may be determined upon by the corporation, and the president, a vice president, or the secretary of any such corporation, may administer such oaths of office as may be prescribed in its by-laws. 63 v. 89, § 6; S. & S. 183.

§ 3830. May appoint inspectors, etc.—

Every inspector, gauger, weigher, or measurer appointed by any such association shall be recognized as a legally appointed officer, for the duties pertaining to his position, in the city and

county wherein the association is located, and shall be subject to all the provisions and penalties of the laws relating to such officers; and the certificate of such appointee as to his official acts shall be evidence, and binding upon, the persons interested. 63 v. 89, § 9; S. & C. 183.

§ 3830a. Inspectors, gaugers, etc., may appoint deputies—

Every inspector, gauger, weigher, or measurer appointed by any board of trade or chamber of commerce heretofore or hereafter organized in this state, may appoint one or more deputies to be approved by the board of directors or board of officers of such board of trade or chamber of commerce, and the said inspector, gauger, weigher, or measurer may take from his deputy a bond, with sureties, conditioned for the faithful performance of the duties of the appointment, but in all cases said inspector, gauger, weigher, or measurer shall be responsible for his deputy's neglect of duty or misconduct in office. 80 O. L. 98.

§ 3831. Other like associations may have benefit of these provisions—

Any board of trade or chamber of commerce heretofore organized in this state may avail itself of the privileges and powers, in whole or in part, conferred by the three preceding sections, by making a certificate of its adoption thereof, under its seal, and attested by the signatures of its president and secretary, which shall be filed in the office of the secretary of state, and when so filed shall confer all the privileges and powers so defined. 63 v. 89, § 11; S. & S. 184.

§ 3832. May purchase or lease grounds and borrow money—

Any such incorporated association may purchase or lease suitable grounds and erect thereon such buildings as the board of directors deem proper for the interest of the association. And such association may lease any portion of such building, that is not occupied or needed for its immediate use, and such incorporated association shall have power, for the purpose mentioned in this section, to borrow money and execute and sell or otherwise dispose of its bonds or other obligations, secured by a mortgage of its property or otherwise. 84 O. L. 33.

[Secs. 3833, 3834, 3835a, 3835b, 3835c, 3835d, 3835e, 3835f,

3835*g*, 3835*h*, 3835*i*, 3835*j*, and 3836, were repealed in 88 O. L. 469. Sec. 3835 was repealed in 83 O. L. 116.]

The following notes to sections 3833 to 3835*g*, relate to the laws in force prior and up to May 1, 1891, when they were repealed (88 Ohio St. 469):

The fact that a member of such association holds a greater number of shares than is allowed by its by-laws, but not in excess of the number limited by the statute, is no defense against the claim which the corporation has against him on account of such shares; and such associations are not required to ascertain the use to which a member, who obtains a loan on his stock, intends to apply the money. *Hagerman v. Building Association*, 25 Ohio St. 186.

Such corporation, under the act of May 9, 1868 (65 v. 173), may, by its by-laws, assess and collect a reasonable fine, from a member of the association, for default in the payment of his stated dues; but can not assess or collect more than one fine for the non-payment of the same stated due; and there is no power conferred upon the corporation to levy, assess, or collect a fine for any default in the payment of interest, *Id.*; *Building Association v. Gallagher*, 25 Ohio St. 208; but when the law under which the association is organized allows a greater rate of interest than the general law, it is not usury to take such greater rate. *Lucas v. Building Association*, 22 Ohio St. 339.

The advancement of money by an association to its members, as provided in the act of February 21, 1867 (64 v. 18), is not the exercise of banking powers; and such associations are not authorized to charge interest on the premiums allowed for precedence in taking loans, the money actually advanced being the basis for the computation of interest. *Building Association v. Gallagher*, *supra*.

When a loan is advanced to a member on his stock, it is within the capacity of the corporation to take security from such member, by mortgage, or otherwise, for the payment of fines, as well as stated dues, which may be lawfully assessed on account of such stock. *Hagerman v. Building Association*, *supra*.

The payment of stated dues and fines can not be resisted by a member on the ground that the by-laws of the association have not been adopted by a vote of the members or directors, when it appears that they have been recorded, acted upon, and enforced as the by-laws of the association. *Id.*

After the breach of the condition of a mortgage given to secure the payment of stated dues, interest, and loans advanced, and fines, the decree in an action to foreclose should be confined to the amount of such dues, interest and fines then due and unpaid. *Id.*

An association incorporated under the act of May, 1868 (65 v. 137, 173), has not the power to refuse to loan its funds to its members; nor to establish such rules and regulations, or so conduct its business, as to prevent the loan of its funds to a member who bids the highest premium therefor; nor to borrow money for the purpose of lending it; nor to divide or distribute its funds among its members in advance of the distribution at the winding up of the corporation; nor to traffic in shares of its own stock. *State v. Building Association*, 35 Ohio St. 258.

Such corporation, acting in good faith and reasonably, may compromise with a member, and release him from further obligation to the corporation, whether the indebtedness be for a loan or on subscription. *Ib.*

Where such compromise has been made in good faith, it will not be rescinded because the released member was paid a larger sum than he would have received upon a *pro rata* distribution of the assets. *Wangerien v. Aspell*, 47 Ohio St. 250.

An executory contract between a building association and a member in respect to more than twenty shares is *ultra vires* and cannot be enforced. *Simpson v. Building and Savings Association*, 38 Ohio St. 349.

The act of May 9, 1868, does not grant banking powers within meaning of section 7, article 13, of constitution. *Bates v. People's S. & L. Assn.*, 42 Ohio St. 655.

A borrower who has deposited money to procure a loan is estopped to deny that he is in fact a depositor. *Ib.*

Such corporation can take only rate of interest allowed by law, and premium bid for precedence in taking a loan at a competitive sale of such right. *Ib.*; *State v. Greenville Bldg. Assn.*, 29 Ohio State, 92. See, also, 5 N. P. 86.

Such corporation may pay taxes or assessments levied on real estate mortgaged to it to secure a loan and will have first lien therefor, it having no knowledge of defect or illegality in the assessment; and where the same were paid by its secretary and treasurer for the corporation with its money and he prayed for judgment in his own name: *Held*, judgment for corporation for such payments, without amending petition, was not error. *Ib.*

By-laws construed. *Building Assn. v. Bebout's Adm'r*, 29 Ohio St. 252.

Building associations are corporations for profit, and dues payable by the association's constitution until the full amount of capital is paid, are analogous to payments on stock subscriptions; and where payment of dues was stopped by consent, and association was in hands of receiver, no dues were payable except as assessments by the court to pay debts and equalizing stockholders among themselves, and an assignment of a mortgage by the corporation is void as to the receiver who is entitled to collect the interest payable by the terms of the mortgage, monthly, there being no defense showing that without such interest there were assets sufficient. *Hinman, Receiver, v. Ryan*, 3 C. C. 529.

See *Building Assn. v. Cummings*, 45 Ohio St. 664, as to liability of several upon bond having only one seal. See *Seibel v. Bldg. Assn.*, 43 Ohio St. 371, as to shares, value, etc.; also, *Eversman, Receiver, v. Schmitt*, 53 Ohio St. 174; *Ruehlman v. Atlantic Bldg. Assn. Co.*, 6 C. C. 285; *Turner Bau-Verein v. Woodburn*, 27 B. 409; *Building and Loan Co. v. Richter*, 16 C. C. 191, reversing 4 N. P. 97; *Sachs v. Duckworth Bldg. & Loan Assn.*, 4 N. P. 214 (Sup. Ct. Cin.); *Schone v. Consol. Bldg. Co.*, 4 N. P. 216 (Sup. Ct. Cin.); *Ward v. Building Co.*, 5 N. P. 132 (Sup. Ct. Cin.); *Galvin, Receiver, v. Albers*, 6 N. P. 273 (Sup. Ct. Cin.); *Bldg. Assn. v. Tenney*, 7 N. P. 130.

An Act to provide for the organization, regulation and inspection of building and loan associations and to repeal certain laws therein named. Passed May 1, 1891.

(§ 3836-1.) Sec. 1. Building and loan associations ; domestic, foreign—Laws governing—

A corporation for the purpose of raising money to be loaned among its members shall be known in this act as a building and loan association. Associations organized under the laws of this state shall be known in this act as "domestic" associations, and those organized under the laws of other states or territories, as "foreign" associations. Associations may be organized and conducted under the general laws of Ohio relating to corporations, except as otherwise provided in this act. 88 O. L. 469.

A corporation may become a member to borrow money for its business. *Norwalk Sav. Bk. Co. v. Norwalk Metal, etc., Co.*, 14 C. C. 1.

(§ 3836-2.) Sec. 2. Capital stock; subscription to—Directors—

The capital stock named in the articles of incorporation shall be deemed to refer to the authorized capital, and the organization may be completed and business commenced when five per cent thereof is subscribed. Directors may be elected for any term, not less than one year nor longer than three years, but if such term be longer than one year, it shall be so arranged that the term of office of an equal number of directors, as nearly as may be, will expire each year. 88 O. L. 469.

(§ 3836-3.) Sec. 3. Deposits—Stock—Dues, fines, interest and premiums—Withdrawals—Cancellations—Stock of minors—Real estate and personal property—Borrowing money—Loans—Cancellation of loans—Reserve fund—Dividends—Increase or decrease of capital or face value of shares—Dissolution—Constitution and by-laws—General powers—

Such corporation shall have power: To receive money on deposit from time to time, to the extent necessary to meet the demands made on it by its members and depositors, but shall not pay interest thereon, exceeding the legal rate. To issue stock to members on such terms and conditions as the constitution and by-laws may provide; but no person shall vote more twenty shares in any such

corporation in his own right. To assess and collect from members and depositors such dues, fines, interest and premium on loans made, or other assessments, as may be provided for in the constitution and by-laws. Such dues, fines, premiums or other assessments shall not be deemed usury, although in excess of the legal rate of interest. To permit members to withdraw all or part of their stock deposits at such times and upon such terms as the constitution and by-laws may provide. Any member, however, who withdraws his entire stock or whose stock has matured, shall be entitled to receive all dues paid in and dividends declared, less all fines or other assessments, and less a pro rata share of all losses, if any have occurred. To cancel shares of stock upon which all payments have been withdrawn, or upon which loans have been canceled, and reissue them as a new stock. To issue stock to minors and permit the same to be withdrawn as other stock, and the receipt of such minor shall be a valid acquittance, if his rights have been fully secured to him. To acquire, hold, incumber and convey such real estate and personal property as may be necessary for the transaction of its business or necessary to enforce or protect its securities. To borrow money, not exceeding twenty per cent of the assets, and issue its evidences of indebtedness therefor. To make loans to members and depositors on such terms, conditions, and securities as may be provided in the constitution and by-laws. To cancel such loans and release the securities on such terms as the board of directors may provide. But any member may have his loan canceled upon the following terms, to wit: After the premium for one year has been paid, and also the interest and premium up to the date of cancellation, the borrower shall pay the sum actually borrowed, less the dues paid and dividends credited. He shall pay also any fines or other assessments required by the constitution or by-laws. To accumulate from the earnings and invest as the board of directors may determine, a reserve fund, for the payment of contingent losses. To make such annual or semi-annual distribution of the earnings (after paying expenses and setting aside a sum for the reserve fund as hereinafter provided), as the constitution and by-laws may prescribe. To increase or decrease its authorized capital or the face value of its shares at any time, by a majority vote of its board of directors; and a certificate of such action shall be made by the president and secretary, and duly filed with the secretary of state. To dis-

solve the corporation when its continuance shall be deemed, by a majority vote of its members, to be no longer desirable, subject, however, to the vested rights of members. To provide, by constitution adopted by its members, and by-laws adopted by its board of directors, for the proper exercise of the powers herein granted, and the conduct and management of its affairs. All such other powers as are necessary and proper to enable such corporation to carry out the purpose of its organization. 88 O. L. 469.

On right of stockholder to recover amount of his deposit, see article in 33 B. 201.

Fines and penalties accrue to date of payment of mortgage where mortgagor assigns for benefit of creditors. *Hutchinson v. Straub*, 16 C. C. 452.

Provision exempting building and loan associations from operation of usury laws is unconstitutional. *Mykrantz v. Globe Bldg. & Loan Assn.*, 19 C. C. 51. See criticism of case by A. T. Brewer, 42 B. 330.

(§ 3836-4.) **Sec. 4. Deposit and withdrawal of funds—
Treasurer's bank book; expenditures—Bond
of certain officers—Directors not eligible as
bondsmen, etc.—**

The board of directors shall designate a bank or banks in which the treasurer shall deposit all funds in the name of such corporation. Such funds can then be withdrawn only by check signed by the president and financial secretary, or such other officers, as the board of directors may designate. The treasurer's bank book shall be open to the inspection of any director at any time. No president or secretary or other officer shall sign any check unless the expenditure has been authorized by the board of directors. All officers of such association who have charge or possession of money, securities, or property, shall give bond before entering upon their duties to the satisfaction of the board of directors, for the faithful performance of the same, and the safe keeping and proper application of all moneys or property coming into their hands. All officers of such corporations, on being re-elected to office shall renew their bonds. The bond may be increased or additional sureties required, at any time, by the board of directors. Directors shall not be eligible as bondsmen, and shall be individually liable for any loss to members, caused by their neglect to comply with the provisions of this section. 88 O. L. 469.

(§ 3836-5.) Sec. 5. Fund for contingent losses—

The amount to be set aside to the fund for contingent losses shall be determined by the board of directors, but in all permanent or perpetual associations, at least five per cent of the net earnings shall be set aside each year to such fund until it reaches at least five per cent of the outstanding loans. All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in said fund falls below five per cent of the loans as aforesaid, it shall be replenished by annual appropriations of at least five per cent of the net earnings as hereinbefore provided until it again reaches said amount. 88 O. L. 469.

(§ 3836-6.) Sec. 6. Earnings; application of—Dividends—Losses; apportionment of—

All expenses of such associations shall be paid out of the earnings only, and so much of the earnings as may be necessary shall be set aside each year for such purpose. But charges incident to a loan, if paid by the borrower, shall not be deemed a part of the current expenses. A portion of the earnings, to be determined by the board of directors, shall also be reserved annually, or semi-annually, for the payment of contingent losses, as provided in section five of this act, and the residue of such earnings shall be transferred as a dividend annually, or semi-annually, in such proportion to the credit of all members, as the corporation by its constitution and by-laws may provide, to be paid to them at such time and in such manner in conformity with this act as the corporation, by its constitution and by-laws may provide. All losses shall be assessed in the same proportion and manner on all members after the amount in the reserve fund has been applied to the payment of the same. 88 O. L. 469.

(§ 3836-7.) Sec. 7. Taxation of building and loan association stock—

The shares and loans, advanced to its members, shall be exempt from taxation, except shares or stock upon which no loans have been made or money advanced by the company, shall be considered and held as credits, and the said members individually, shall list for taxation the number of shares held by them, and the true value thereof in money, on the day preceding the second Monday in April in each year, and the same shall be assessed at such valuation for taxation and taxes as other property. 88 O. L. 469.

(§ 3536-8.) Sec. 8. Bureau of building and loan associations—

There is hereby established in the department of insurance a bureau to be known as the bureau of building and loan associations, which shall be charged with the execution of the laws of this state relating to building and loan associations. 88 O. L. 469.

(§ 3836-9.) Sec. 9. Superintendent of insurance, ex-officio, inspector—Compensation, bond, oath—Deputy inspector—

The chief officer of said bureau shall be known as the inspector of building and loan associations; the superintendent of insurance, shall, ex-officio, be also the inspector of building and loan associations, and as compensation for his services as such inspector he shall be entitled to receive the sum of one thousand dollars per annum. Before entering upon his duties, he shall give bond to the State of Ohio in the sum of ten thousand dollars, to be approved by the governor, conditioned for the faithful discharge of his duties, and the bond, with his oath of office and the approval of the governor indorsed thereon, shall be filed with the secretary of state.

The inspector may appoint a deputy, who shall be authorized to perform the duties attached by law to the office of inspector, during his absence or disability, and shall receive a salary of eighteen hundred dollars per year. He shall also appoint such other clerks or examiners as may be provided for by law. 88 O. L. 469.

(§ 3836-10.) Sec. 10. Duty of adjutant-general—

The adjutant-general shall provide suitable accommodations for the conduct of the business of the bureau in the office of the superintendent of insurance and furnish the necessary furniture, etc., and the expense for the same shall be paid out of the state treasury, on the certificate of the inspector and the warrant of the adjutant-general. 88 O. L. 469.

(§ 3836-11.) Sec. 11. Duty of inspector—

It shall be the duty of the inspector to see that all the laws of this state, relating to building and loan associations, are faithfully executed. 88 O. L. 469.

(§ 3836-12.) **Sec. 12. Laws governing foreign associations**
—Deposit—Certified copy of charter, etc.—
Issue of summons—

Foreign building and loan associations doing business in this state, shall conduct the same in accordance with the laws of the state governing domestic associations, and no such association shall do any business in this state until it procures from the inspector a certificate of authority to do so. To procure such authority, such association shall comply with the following provisions:

First. It shall deposit with the inspector one hundred thousand dollars, either in cash or bonds of the United States or of the State of Ohio, or of any county or municipal corporation in the State of Ohio, satisfactory to the inspector.

Second. It shall file with the inspector a certified copy of its charter, constitution and by-laws, and other rules and regulations showing its manner of conducting business together with a statement such as is required annually from all associations.

Third. It shall also file with the inspector a written instrument, duly executed, agreeing that a summons may issue against it from any county in this state directed to the sheriff of the county in which the office of inspector is situate, commanding him to serve the same by certified copy personally upon the inspector or by leaving a copy thereof at his office. The inspector shall, however, mail a copy of any papers served on him, postage prepaid, to the home office of such association. 88 O. L. 469.

(§ 3836-13.) **Sec. 13. Certificate of authority to do business—**

Whenever such association has complied with the provisions of this act, and the inspector is satisfied that such association is doing business according to the laws of this state, and is in sound financial condition, he shall issue his certificate of authority to such association to do business in this state. Annually thereafter, upon the filing of the annual statement herein provided for, if the inspector shall be satisfied as aforesaid, he shall issue a renewal of such certificate of authority. 88 O. L. 469.

(§ 3836-14.) **Sec. 14. Collection of interest and exchange of securities—**

Such foreign association may collect and use the interest on

any securities so deposited, so long as it fulfills its obligations and complies with the provisions of this act. It may also exchange them for other securities of equal value and satisfactory to the inspector. 88 O. L. 469.

(§ 3836-15.) Sec. 15. Deposit to be held as security for claims—

The deposit made with the inspector shall be held as a security for all claims of residents of this state against said association, and shall be liable for all judgments or decrees thereon, and subjected to the payment of the same in the same manner as the property of other non-residents. Should any association cease to do business in this state, the inspector may release securities in his discretion, retaining sufficient to satisfy all outstanding liabilities. 88 O. L. 469.

(§ 3836-16.) Sec. 16. Annual reports—

Every building and loan association doing business in this state shall, annually, at the end of each fiscal year, or within forty days thereafter, make a full and detailed report in writing of the affairs and business of the association for the preceding year, and showing its financial condition at the end of said fiscal year. With the first report made by any association it shall also file a certified copy of its constitution and by-laws, or other rules and regulations, showing its manner of doing business. 88 O. L. 469.

(§ 3836-17.) Sec. 17. What annual report shall contain—

The statement shall be in such form and contain such information as may be prescribed by the inspector of building associations. It shall be sworn to by the secretary, and its correctness attested by at least three directors, or an auditing committee appointed by the board. The original shall be filed with the inspector of building associations within forty days after the close of the fiscal year, and such an abstract thereof as the inspector may require shall be posted for sixty days in the office or meeting place of such association, and also published in some paper regularly issued in the county in which said association is located. 88 O. L. 469.

(§ 3836-18.) **Sec. 18. Inspector shall examine associations; when—Expense of inspection—Proceedings of revocation of charter for illegal practices—Dissolution of association—Proceedings for, shall be instituted—**

The inspector, when he has reason to suspect the correctness of any statement of an association doing business in this state, or that its affairs are in an unsound condition, or that it is not conducting its business in accordance with law, may make or cause to be made by some person by him appointed for that purpose, an examination into the affairs of such association. The expense of all examinations shall be paid by the associations examined, except that the actual expense of the examination of an association organized under the laws of this state, shall be paid out of the fees paid by such associations to the inspector, as hereinbefore provided.

Should the inspector, upon examination, find any domestic association conducting its business in whole or in part contrary to law, or failing to comply with the law, he shall so notify the board of directors of such association in writing, and if, after thirty days, such illegal practices or failure continue, he shall communicate the facts to the attorney-general, who shall cause proceedings to be instituted in the proper court to revoke the charter of such association.

Should the inspector find, upon examination, that the affairs of any such association are in an unsound condition, and that the interests of the public demand the dissolution of such association, and the winding up of its business, he shall so report to the attorney-general, who shall institute the proper proceedings for that purpose. 88 O. L. 469.

(§ 3836-19.) **Sec. 19. Examiners; powers of—**

Such examiners shall have access to and may compel the production of all the books, papers, securities and moneys, etc., of the association under examination. They shall have power to administer oaths to and examine the officers and agents of such association as to its affairs. 88 O. L. 469.

(§ 3836-20.) **Sec. 20. Publication of result of examination—**

When the inspector deems it to the interest of the public, he

may publish the results of such examination in some newspaper of general circulation in the county in which such association is located, if it be a domestic association, and in some newspaper in the city of Columbus, Ohio, if it be a foreign association. 88 O. L. 469.

(§ 3836-21.) Sec. 21. Authority of foreign association to be canceled for illegal practices—

Should the inspector find, upon examination, that any foreign association does not conduct its business in accordance with the law, or that the affairs of any such association are in an unsound condition, or if such association refuses to permit examination to be made, he may cancel the authority of such association to do business in this state, and cause a notice thereof to be mailed to the home office of the association, and to be published in at least one newspaper published in the city of Columbus. After the publication of such notice, it shall be unlawful for any agent of said association to receive any further stock deposits from members residing in this state, except payments on stock on which a loan has been taken. 88 O. L. 469.

(§ 3836-22.) Sec. 22. Fees to be paid to inspector—

Foreign building and loan associations shall pay to the inspector the following fees, which shall be paid into the state treasury, to wit: For filing each application for admission to do business in this state, one hundred dollars. For each certificate of authority and annual renewal of same, fifty dollars; both foreign and domestic associations shall pay to the inspector for filing each annual statement, as follows: If the assets of the association, as shown by the statement filed, amount to \$50,000.00 or less, \$3.00; if more than \$50,000.00 and less than \$100,000, \$5.00; if more than \$100,000.00 and less than \$250,000.00, \$10.00; if more than \$250,000.00 and less than \$500,000.00, \$20.00; if more than \$500,000.00 and less than \$1,000,000.00, \$30.00; and if more than \$1,000,000.00, \$50.00. For each copy of a paper filed in his office, twenty-five cents per folio. For affixing the seal of office and certifying any paper, one dollar. Provided, however, that the inspector may retain from the fees so received by him up to the close of the fiscal year ending November 15, 1892, a sum sufficient to pay the salaries and necessary expenses of the bureau of building and loan associations up

to said time, which sum is hereby appropriated for that purpose.
88 O. L. 469.

(§ 3836-23.) Sec. 23. Cash securities—Where deposited—

All securities of cash deposited with the inspector shall be immediately deposited with the treasurer of state, who, with his sureties, shall be responsible for the safe-keeping thereof. The treasurer shall deliver such securities only upon the written order of the inspector of building associations. 88 O. L. 469.

(§ 3836-24.) Sec. 24. Penalties for violation of law by associations—

It shall be unlawful for any building and loan association to do business in this state without having first complied with the provisions of this act, and any association violating any of the provisions of this act, or failing to comply with any of its provisions, shall be fined not less than fifty nor more than one thousand dollars, to be recovered by an action in the name of the state, and on collection paid into the state treasury; provided, that building and loan associations organized in other states, having heretofore transacted business in this state, which shall not have complied with the provisions of this act, shall have the right to close up their business, and fulfill their contracts, heretofore entered into with the citizens of this state, through their duly authorized agents, without being subject to the penalties prescribed by this act. 88 O. L. 469

(§ 3836-25.) Sec. 25. Penalties for violation of law by officers, agents, etc.—

Every president, director, trustee, member of any committee, secretary, treasurer, attorney, or any other officer at any time created, or agent of any such corporation, who embezzles, abstracts or willfully misapplies any of the moneys, funds or credits of such corporation, or who issues or puts into circulation any warrant or other order, or who assigns, transfers, cancels or delivers up any note, bond, draft, mortgage, judgment, decree, or any written instrument belonging to such corporation, or raises money otherwise, or receives money from any member or other person for and in the name of such corporation, unless duly authorized by the board of directors of such corporation; or who shall sign the name of any person to any order or warrant for the payment of

money without proper power of attorney or written order from such person to whose order such warrant or order is made payable; or any member or members of the board of directors who shall vote to declare, or any financial or first secretary of such corporation who shall declare or advise the board of directors of such corporation to declare a greater dividend than what has been actually earned by the corporation, for the purpose of deceiving the public or defrauding the members of such corporation; or who certifies to or makes any false entry on any book, report, or statement of or to such corporation, with intent in either case to deceive, injure or defraud the corporation or any other company, body politic or corporate, or any individual person, or to deceive any one appointed to examine the affairs of such corporation; and every person who with like intent aids or abets any president, secretary, treasurer, committee or other officer or person in any violation of this section, shall be deemed guilty of a felony, and shall be imprisoned not less than one year nor more than ten years, and shall be liable civilly to the party injured, to the extent of such damage thereby incurred, and suit may be brought against such person and the sureties on his bond given to such corporation for the faithful performance of his duty. Any officer whose duty it is, failing to make the reports required by this act, and any officer, employe, or other person, who solicits business for, aids or assists any building and loan association to do business contrary to the provisions of this act, or without having complied with its provisions, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. Such fines, when collected, to be paid into the state treasury. 88 O. L. 469.

Attorney is not an "officer" of the association. *Loan and Bld'g Co. v. Kuehnert*, 7 N. P. 264 (C. P.)

(§ 3836-26.) Sec. 26. Inspector must make annual report—

The inspector shall keep and preserve in permanent form a full record of his proceedings, including a concise statement of each association examined, and he shall, annually, make a report to the legislature of the general conduct and condition of the building and loan associations doing business in this state, with such

suggestions as he may deem expedient. Such report shall also include the information contained in the statements required of the associations, and arranged in tabulated form. He shall also report the names and compensation of the clerks employed by him, the whole amount of the income, the source whence derived, and the expenses in detail, during the year ending on the thirty-first day of December.

(§ 3836-27.) Sec. 1. Dissolution and consolidation of building and loan associations—

Building and loan associations shall be authorized to provide in their constitutions and by-laws for the time and terms of the dissolution of such corporations; also for the consolidation of two or more of such corporations into one, upon such terms and conditions as may be determined upon by their boards of directors; also, in the case of the dissolution of any such corporation, its board of directors may, by a majority vote, be authorized to sell and transfer its mortgage securities or other property, or both, to another corporation, person or persons, subject always to the vested and accrued rights of the mortgagors. 90 O. L. 315.

§ 3837. Co-operative trade associations—

An association incorporated for the purpose of purchasing, in quantity, grain, goods, groceries, fruits, vegetables, provisions, or any other articles of merchandise, and distributing the same to consumers at the actual cost and expense of purchasing, holding, and distributing the same, may employ its capital and means in the purchase of such articles of merchandise as it deems best for the company, and in the purchase or lease of such real and personal estate, subject always to the control of the stockholders, as may be necessary or convenient for purposes connected with and pertaining to its business, and may adopt such plan of distribution of its purchases among the stockholders and others as it deems most convenient and best adapted to secure the ends proposed by the organization; and any profits that may arise from the business of the company may be divided among the stockholders from time to time, as it deems expedient, in proportion to the several amounts of their respective purchases. 64 v. 145, §§ 2, 5; S. & S. 184, 185.

§ 3838. Common-carrier companies—

A corporation organized as and for a common-carrier company shall have the following powers:

1. To make all contracts that it shall be lawful for natural persons to make for the carriage of persons, and the storage, forwarding, carriage, and delivery of property, but subject to the same liabilities.

2. To lease, and to hold and operate, any line of railway and its appendages, either before or after its completion, owned by a municipal corporation of this state, and any railway connected therewith, lying without this state, and such portion of any railway within this state as may be necessary for the convenient dispatch of its business.

3. To construct, or complete and equip, any railway and its appendages which it is authorized to lease.

4. To borrow money, not exceeding its authorized capital stock, at a rate of interest not exceeding seven and three-tenths per cent per annum, and execute bonds or promissory notes therefor, payable in gold or lawful money, in sums of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of its property then or thereafter acquired, and its income and franchises, including the franchise to be a corporation; but no mortgage bonds shall be sold at less than par in lawful money, without the consent of a majority in interest of the stockholders, given at a 'meeting of the stockholders, or in writing. 74 v. 84, § 4.

In absence of gross negligence, carrier is not liable for loss by fire of merchandise samples shipped as baggage. *Greenwich Ins. Co. v. Packet Co.*, 1 N. P. 126 (Sup. Ct., Cin.)

After stoppage *in transitu*, carrier acts at his peril in delivering to either party. *Howe v. Ry. Co.*, 18 C. C. 333. See *Koontz v. Ry. Co.*, 5 N. P. 15 (C. P.), affirmed in 15 C. C. 288.

The law of the place of delivery governs in action for loss by negligence of carrier; and a clause limiting liability, in a receipt, is not valid against loss by fraud or negligence. *Jacobson v. Adams Express Co.*, 1 C. C. 381; affirmed, 24 B. 496; 28 Ohio St. 144; *Ambach v. B. & O. R. R. Co.*, 30 B. 111 (C. P.)

Condition in bill of lading limiting liability for loss by its negligence, to a certain amount, and requiring presentation of claim within sixty days, is void. *Stevenson v. Wells, Fargo & Co.*, 33 B. 247 (Sup. Ct.)

Contra, where valuation agreed upon. *Ry. Co. v. Simon*, 15 C. C. 123.

But liability for loss without fault or negligence may be limited by special agreement. *Gaines v. Union Trans. & Ins. Co.*, 28 Ohio St. 418.

A rule, and agreement that freight shall be removed in 48 hours from

its arrival is reasonable, and binds the shipper though he did not read the contract or note its contents. *N. Y., L. E. & W. R. R. Co. v. Seiberling Co.*, 8 C. C. 593.

Common carriers of passengers must exercise the greatest care that persons do who are engaged in business of the same character where accidents of like nature are liable to occur. *Brooklyn St. R. R. Co. v. Kelley*, 33 B. 330, affirming 6 C. C. 1.

Common carrier preventing goods coming to possession of consignee is liable for conversion; if stolen afterwards, carrier not released; seizure under process or destruction by public authorities no defense unless carrier free from procurement or connivance and gives prompt notice to owner; duty to provide sufficient and suitable means for carriage of goods, and while measure of damages for delay merely is difference in value of goods between time of delivery and time when delivery should have been made, upon conversion measure is value when delivery should have been made; rule that charge for carriage must be paid or tendered does not apply in action for conversion. *R. R. Co. v. O'Donnell*, 49 Ohio St. 489.

A common carrier contracting to transport goods over other railroads connecting with its own cannot stipulate that it shall not be liable for loss by negligence while the goods are on either road. *Ry. Co. v. Pontius*, 19 Ohio St. 221. See also *King v. Deland, etc.*, *R. R. Co.*, 18 B. 39.

But the delivery of a receipt or notice, containing such special limitations, without objection from the shipper, but without his assenting thereto, is not sufficient; and the delivery of a "dray ticket," which could be but was not exchanged for a bill of lading, does not necessarily make the bill of lading part of the shipping contract. *Mack et al. v. Great West. Despatch*, 3 C. C. 36. See *Am. Roofing Co. v. Packet Co.*, 5 N. P. 146 (Sup. Ct. Cin.)

In absence of fraud and mistake, a bill of lading delivered to the consignor at time of receipt of goods for shipment becomes the contract of shipment, and its terms cannot be contradicted by parol. *Ry. Co. v. La Tourette*, 2 C. C. 279; *Ry. Co. v. Pontius*, 19 Ohio St. 221.

In the absence of both contract and statute, to the contrary, the liability of a railroad company, as a common carrier, continues until notice to the consignee of the arrival of his goods, and a reasonable time during business hours after receipt of notice, to inspect and remove them; unless he is unknown, or absent, or cannot be found, in which case the goods may be stored. *R. R. v. Hatch*, 52 Ohio St. 408.

Delivery to *R. R. Co.* as warehouseman, see *Fisher v. Ry. Co.*, 17 C. C. 491.

Person in charge of child on train is liable for its fare, and upon refusal to pay, both may be ejected at next station; but if such person has paid his own fare to a point beyond, the unused value of the fare or ticket over and above the fares of both for the distance already traveled must be returned, or the company will be liable in damages. *R. R. Co. v. Orndorff*, 55 Ohio St. 589.

Common carrier is not required to carry merchandise for a passenger, as baggage. *Smith v. C. H. & D. Ry. Co.*, 2 N. P. 29 (Sup. Ct. Cin.); *Ins. Co. v. Packet Co.*, 7 N. P. 188 (Sup. Ct. Cin.).

Although common carrier of passengers is under no obligation to carry

articles of merchandise as baggage, nor liable for loss if received without actual knowledge of its true character, it is liable if its agents had actual knowledge that it was merchandise but received and checked it as baggage. *Ry. Co. v. Dage, Andrews & Co.*; *Ry. Co. v. Ambach*; *Ry. Co. v. Bowler & Burdick Co.*, 57 Ohio St. 38; affirming 10 C. C. 272 and 490.

As to knowledge and degree of care required, see *Ry. Co. v. Bowler*, 19 C. C. 737.

Common carrier cannot, by special agreement, relieve himself from responsibility for his own negligence, nor limit his liability for losses resulting therefrom. *Ry. Co. v. Sheppard*, 56 Ohio St. 68.

Goods not taken by consignee on notice, and freight unpaid, are not delivered to consignee, and vendor may recover same by stoppage in transitu—sale by consignee to carrier for freight and other pre-existing debts is invalid. *Ry. Co. v. Koontz*, 61 Ohio St. 551.

Railway companies are held to the highest degree of care toward passengers; the relation continues till the train has reached its destination, and the passenger has time to leave the premises by the usual route. *P. C. & St. L. Ry. Co. v. Martin, Adm'r*, 2 N. P. 353 (Sup. Ct. Cin.); affirmed, 55 Ohio St. 650.

A common carrier may permit the consignee of goods to inspect them, even where the bill of lading requires the carrier to collect the purchase price before delivery. Permission to inspect is not a delivery. *Aaron v. Adams Express Co.*, 27 B. 183 (C. P.)

The obligation of common carrier is to deliver to the consignee named in the address; and delivery to wrong person not induced by some act or representation of the consignor, is not excused by any degree of care which the carrier may exercise. *Southern Express Co. v. Oskamp*, 61 Ohio St. 341, reversing 14 C. C. 176, and contrary to *Ry. Co. v. Luce*, 11 C. C. 543.

§ 3839. Any company may subscribe to its stock—

Any company, incorporated or organized under the laws of this state, may subscribe for or become the owner of stock in such corporation; but before any such subscriptions shall be made, the directors of the company subscribing shall be authorized to make the same by a vote of the majority in interest of its stockholders, or obtain their consent thereto in writing. 74 v. 84, § 9.

§ 3840. Dock companies—

A company organized for the purpose of constructing and establishing docks in and adjacent to any of the navigable waters in or bordering upon this state, may construct or purchase any dock or docks, and erect thereon any structure suitable for receiving, storing, and delivering produce, and goods of whatever description, and may repair and protect such dock or docks and

structures, and sell the same in such a manner as may be prescribed by the by-laws of the company. 62 v. 48, § 4; S. & S. 180.

§ 3841. Elevator companies—

A company or association, organized as an elevator company, may purchase and hold real and personal estate, erect or purchase, and own, the necessary buildings, offices, and machinery for the purpose of carrying on the business of receiving, storing, delivering, and forwarding grain of all kinds, and may add to and connect with the same, the business of general storage, warehousemen, and forwarders of all kinds of produce and merchandise, but shall not, on its own account, nor for others, deal as buyers or sellers; and, in the prosecution of its business, it shall be governed by the same laws, not inconsistent with this section, which govern individuals in such employments. 64 v. 85, § 3; S. & S. 196.

§ 3842. When railroad company may take stock in such company—

When any such company erects or owns an elevator building, and uses the same for the purpose of receiving or delivering grain from or to any railroad company, as freight carried or to be carried over its road, or any part thereof, such railroad company may subscribe to or purchase shares in the capital stock of the elevator company, to an amount not exceeding one-third of the entire capital stock of the elevator company, in the name of its president or other officer, and hold the same as trustee, and shall be liable upon such stock, in its corporate capacity, to the same extent and in the same manner as in the case of a natural person. 64 v. 85, § 4; S. & S. 196.

§ 3843. Farm laborers' associations—

No association, incorporated for the purpose of promoting the interests of agriculture, and for the relief of distressed farm laborers, or their widows and orphans, whether such widows and orphans are members of such association or not, and for any other charitable purpose, shall take or hold any real estate, except such as may be actually occupied in the exercise of its legitimate business, and such as it may acquire in security for or satisfaction of debts justly due it; but real estate so occupied shall

not in any case exceed in value the sum of fifty thousand dollars. 74 v. 204, § 5.

§ 3844. What investment it may make—

Such associations shall, after paying their expenses, invest their funds exclusively for the purposes mentioned in their articles of incorporation, and may invest the same in mortgages upon real estate, or in county, state, or United States securities; they may, in their articles of incorporation, designate the kinds of securities in which their funds shall be invested, in which case no part thereof shall be invested in securities other than those named therein; but they shall not make any loan to any of their trustees or officers; and they may take by gift, subscription, purchase, devise, or loan; but no loan shall be taken for a less term than three years, nor for a greater term than twenty years, nor to an amount exceeding one hundred thousand dollars, nor at a rate of interest greater than four per centum, payable semi-annually. 74 v. 204, § 6.

§ 3845. Must report to attorney-general—

Every such association shall make, annually, and transmit to the attorney-general, under the signatures of a majority of the trustees, attested by the clerk, a full and true statement of its conditions and affairs; and for any willful neglect to make such report within one month after its annual meeting, the attorney-general may proceed against such association for the forfeiture of its charter for such neglect. 74 v. 204, § 7.

§ 3846. Consolidation of two associations—

Any unincorporated association or society organized for any purpose named in section *thirty-eight hundred and forty-three*, may be consolidated with an association incorporated for the purpose named therein, by a resolution of each, adopted by not less than two-thirds of its members, at a meeting called for that purpose; such resolutions, and the votes thereon, shall be recorded by the clerk of the corporate association, and the consolidated association shall thereupon assume the name or title of the corporate association, and be entitled to all its privileges; but the members of the consolidated association shall not be liable for the debts or obligations of the unincorporated association or society. 74 v. 204, § 8.

§ 3847. Attorney-general to report annually—

The attorney-general shall, annually, report to the general assembly, in a condensed form, the number and condition of such associations, as derived from the annual reports of the trustees.

74 v. 204, § 9.

§ 3848. May maintain libraries, etc.—

All such incorporated associations may keep and maintain libraries, and a museum of art consisting of models of such improved instruments and machinery as are best calculated to promote the interests of agriculture, for the benefit of such associations, under such rules and regulations as its members from time to time adopt, and may make all needful by-laws for the good government and regulation of the same. 74 v. 204, § 11.

§ 3849. Ferry companies—

A corporation organized for the purpose of carrying on the ferry business on any of the water-courses in this state, or bordering thereon, may build, purchase, and hold steam ferry-boats, and other vessels and floats, real estate, landings, wharves, docks, and other property, in this state or elsewhere, deemed advisable and proper to carry on its business, buy or lease, and use, let, or otherwise dispose of the same, or any part thereof, in such manner as it deems advisable, carry on the ferry business at the place named in its articles of incorporation, transport persons and property, and receive such compensation therefor as may be lawful, and shall be governed by the laws that govern natural persons in such employments. 62 v. 114, § 4; S. & S. 176.

§ 3850. Firemen's relief associations—

An association of members of any regular fire, hose, or hook and ladder company incorporated for the purpose of affording relief to firemen disabled while on duty, and making donations to indigent sick firemen, and to the widows and orphans of deceased firemen, may provide for the election of its directors or trustees at separate elections, to be held by the members in good and regular standing of each fire, hose, or hook and ladder company who are members of the corporation, and fix the number to be elected by each such company. 58 v. 37, §§ 1, 5, 6; S. & S. 170, 171.

§ 3851. Certain powers of such associations—

Such corporations may decide what officers they will have, and prescribe the manner of their election, and their duties, may make regulations for the relief of firemen disabled while on duty, and provide for such entrance fee for members, and such weekly, monthly, or yearly assessment upon members, as it deems best. 58 v. 37, § 6. S. & S. 171

§ 3852. Power to acquire and dispose of property—

Such corporation may acquire, hold, enjoy, dispose of, and convey all property, real or personal, which it may acquire by purchase, contribution, donation, assessment upon its members, or otherwise, for the purpose of carrying out the objects of the corporation, but it shall not acquire or hold property for any other purpose; and for the purpose of increasing its funds it may loan its money upon bond and mortgage, under such rules and regulations as may be prescribed, and at an annual interest not exceeding six per cent per annum. 58 v. 37, § 5; S. & S. 171.

§ 3853. Fishery companies—

When a company organized for the purpose of propagating fish and establishing fisheries in this state acquires the right to use any stream, canal, or reservoir, from the owner of the land adjoining thereto, for the establishment of a fishery to be owned, maintained, and used for the purpose of propagating fish, no person shall fish therefrom without first obtaining authority from such company; and a person who violates the provisions of this section shall be liable to such company in trespass, or to such fines as may be authorized by law against persons trespassing upon lands; but the navigable streams and public canals in this state shall not be subject to the provisions of this section, and nothing in this section shall be so construed as to prohibit the privilege of any person to use or fish from any lake, river, stream, or reservoir which, by custom or usage, has been used for the purpose of fishing therefrom as regulated by law. 70 v. 9, §§ 2, 6.

§ 3854. Companies for improvement of navigable streams—

The directors of a company incorporated for the purpose of improving any stream of water, or any part thereof, declared

navigable by any law of this state, may prescribe the rates of toll the company shall be entitled to receive for the passage of any boat or other watercraft through any lock upon such improvement, or for the running of any boat or other watercraft between the locks on the same. 56 v. 239, § 7; S. & C. 346.

§ 3855. Manufacturing companies must keep certain accounts—

Every manufacturing company shall establish and keep, at some place within one of the counties in which its business is carried on, a principal office, at which shall be kept accurate accounts exhibiting the financial condition of the corporation, and of its capital stock or shares, and of all its property of every description, and credits, subject to taxation, which accounts shall at all times be subject to the inspection of any assessor lawfully authorized to assess such property and credits; notice of the place where such office is established, and of any change thereof, shall be published in some newspaper of general circulation in such county; and the principal accounting officer of such company shall be a resident of this state. 54 v. 72, § 82; S. & C. 310.

§ 3856. May extend their operations—

A company, incorporated for manufacturing purposes, may, upon a vote of the holders of a majority of its stock, extend its manufacturing operations to articles in the same line of business that are not authorized by the terms of the original articles of incorporation; and, after making a certificate of such vote, and specifying therein how far the manufacturing operations are to be extended, verified by the oath of its president, and filing the same in the office of the secretary of state, such company may manufacture and sell such articles as shall be named or otherwise provided for in such certificate. 58 v. 58, § 1; S. & S. 165.

§ 3857. Company to manufacture iron may make steel—

Any company incorporated for manufacturing iron may, upon a vote of the holders of a majority of its stock, engage in and carry on the business of manufacturing steel in its various branches. 63 v. 67, § 1; S. & S. 166.

§ 3858. Market-house companies—

A company, incorporated for the purpose of constructing and maintaining a market-house, may construct, erect, establish and maintain, at the place named in its articles of incorporation, a suitable building or buildings to be appropriated and used exclusively as a public market-house, for the sale and vending of meats, vegetables and all other kinds of provisions, and of fruits, plants and flowers, and all other articles commonly sold and vended in public market-houses or spaces, on market days, in market hours. 58 v. 92, §§ 1, 2; S. & S. 174.

§ 3859. Powers of such companies—

Such companies may rent, lease, sell or dispose of stalls, cellar vaults or other divisions or spaces in their buildings, in such manner, and upon such terms and conditions, as the directors shall determine; but a uniform rule in renting or leasing such stalls, cellar vaults or other divisions or spaces shall be established, printed and hung in conspicuous places in the buildings, and the same may be changed, from time to time, by the directors thereof; and no preference shall be made, by any variation or difference in rates or prices, in favor of citizens of the city or village wherein the buildings are erected, and against farmers, butchers or producers not residing in such city or village, and no rule, regulation, order or condition shall be made or exacted by any company to prevent farmers, butchers or other persons from disposing of their produce, meats, vegetables or other articles, in such quantities and upon such terms as they may deem proper; but such companies shall prohibit and prevent in their buildings the use of false weights or measures, the exposure or sale of any diseased or decaying meats or vegetables, and any offensive or injurious articles. 58 v. 92, § 5; S. & S. 175.

§ 3860. May keep streets unobstructed—

Such companies may keep the streets, alleys or avenues in front of their buildings free, open and clear of any and all obstructions from stoppage of wagons, carriages or vehicles of any kind, or of horses, mules or cattle, on market days, in market hours. 58 v. 92, § 6; S. & S. 175.

§ 3861. May construct sewers—

When any such company erects its buildings in a city or village

having a sewer with which the company may connect sewers of its own construction sufficient to drain its buildings, it shall construct such sewers, and so connect them; and, in cities and villages not having sewers, such companies may construct sewers for the drainage of their buildings, and charge and receive a compensation for the tapping and use of the same, or portions thereof. 58 v. 92, § 7; S. & S. 175.

§ 3862. Powers of mining and manufacturing corporations—

Any company heretofore incorporated or that may hereafter be incorporated under the laws of this state, for the purpose of mining or boring for petroleum or rock oil, or coal oil, salt or other vegetable, medicinal or mineral fluid, in the earth, or for refining or purifying the same, quarrying stone, marble, or slate, mining coal, iron, copper lead, or other minerals, or manufacturing the same, or engaged in the manufacturing of articles composed in the whole of iron or part of iron and wood, or for manufacturing cotton or woollen fabrics in whole or in part, or both, and carrying on business connected with the main objects of such corporation, may, in its corporate name, take, hold and convey such real estate and personal estate as is necessary or convenient for the purpose for which it was incorporated, and may carry on its business, or so much thereof as is convenient, in any county in this state, or beyond the limits of this state, and may there hold any real or personal estate necessary or convenient for conducting the same. 80 O. L. 76.

§ 3863. May subscribe for stock in transportation companies—

The directors of any such company may authorize its president, or other proper officer, to purchase or subscribe for, in the name of the company, such an amount of the stocks of any railroad, or other transportation company, as they deem necessary, in order to procure facilities for transportation for the manufactories, mines, or other works of the company; but the written consent of the holders of two-thirds of the capital stock of the company to such subscription or purchase must first be had. 71 v. 69, § 2.

§ 3864. Certain companies may consolidate—

Any two or more such corporations may be consolidated in the manner and to the effect provided in sections *thirty-three hundred and eighty-one* and *thirty-three hundred and eighty-two*. 65 v. 50, § 1; S. & S. 241.

§ 3865. Certain conveyances must be made—

When such agreement for consolidation has been duly ratified, in the manner specified in the preceding section, the president and the secretary of the company which, by the agreement, surrenders its name, properties, rights, and franchises, shall execute and deliver to the consolidated corporation proper deeds, assignments, and transfers, conveying to the consolidated corporation all of the rights, property and effects of the corporation so surrendering its name and property, and from and after the execution of such transfers the corporation so agreeing to surrender its name and rights shall cease to be a corporation, and to exercise corporate rights. 65 v. 50, § 4; S. & S. 242.

§ 3866. May build a railroad—

Companies organized for the purpose of mining, quarrying, or manufacturing, may, when such purpose is stated in the articles of incorporation, construct a railroad with a single or double track, with such side-tracks, turnouts, offices and depots as they deem necessary to carry out the objects of the incorporation, from any mine, quarry, or manufactory, to any other railroad, or any canal, slack-water, navigation, or other navigable water or place within or upon the borders of this state, and shall, in respect to such railroad, be subject to and governed by the provisions of chapter two. 53 v. 103, § 3; S. & C. 344.

Under the strict construction applicable to grants of power of eminent domain to corporations, this section does not authorize mining companies to exercise the same power to appropriate private property that is conferred on railroad companies. *Coal Co. v. Wigton*, 19 Ohio St. 560.

A company organized under this section cannot change the place of its principal office, as named in its charter, by resolution of its board of directors; it must proceed under section 3238. *Snow Fork Co. v. Hocking Coal & R. R. Co.*, 7 N. P. 191 (C. P.).

§ 3867. Mining companies may acquire additional power—

A company organized for the purpose of mining coal, or for

the purpose of mining iron ores and coal, or a part of whose business is the mining of iron ores and coal, may upon a vote of the holders of two-thirds its capital stock, engage in the business of manufacturing iron from ores, or engage in any other branch of the manufacture of iron; but before it shall engage in such manufacture it shall, by its president, execute a certificate, under the corporate seal of the company, setting forth the particular branch or branches of the manufacture of iron in which it purposes to engage, and the place or places where the business or any part thereof, is to be located, the same to be verified by the oath of the president, and acknowledged, certified and forwarded to the secretary of state; and thereupon the company may carry on the business named in such certificate. in addition to the business named in the original articles of incorporation. 74 v. 21, § 1.

§ 3868. Museum, park, pond and rink companies—

When a corporation organized for the purpose of constructing and conducting a museum to be used for the exhibition and preservation of works of nature and art, and for instruction in connection therewith, or a public hall of any kind, or a park, pond, or rink to be used for skating or other lawful sports, or for holding fairs, festivals, public meetings, concerts or entertainments of any kind not prohibited by law, provides in its articles of incorporation, that its buildings, or designated part thereof, shall be devoted to the use of the public for all purposes set forth in its articles, free from all costs, charges, and expense, except such as may be necessary for providing the means to keep such buildings, or such designated part thereof and its grounds in proper condition and repair, and to pay the expenses of insurance, care, management, and attendance, so that the public may have the benefit thereof for all the legitimate uses set forth in its articles at as little expense as possible, and that no stockholder, subscriber, trustee, director, or member shall receive any compensation, gain, or profit from the corporation for such public use of its buildings, or such designated part thereof, the authorities of any city, village, or county in which the corporation is located, may appropriate to such use and grant the right and permit such corporation to erect and perpetually maintain its buildings on any of the parks, lands, lots, or grounds which, or the use of which belong to or are subject to the control of such city, village, or

county, or the authorities thereof, and to control the same on the terms and conditions which may be agreed upon between such public authorities and the corporation; and in every such case it shall be lawful for the public authorities and the said corporation to agree that additional trustees of said corporation may be appointed by such public authorities, and upon the number of such trustees and the method of their appointment, and they may agree that any officer or officers of said city, village, or county to be designated by them may act *ex-officio* as such trustees. 78 O. L. 127.

§ 3869. May provide for reversion of stock, etc.—

Such corporation may provide in its organization a limit as to the number of shares which each stockholder may own, the conditions on which such shares may be held or transferred, and for the reversion thereof to the corporation in case of the death or disqualification of a stockholder. 73 v. 8, § 2.

§ 3870. Penalties for trespasses upon property of such companies—

Whoever breaks, throws down, or injures any gate, fence, inclosure, embankment, or erection of any kind, upon the ground of any such corporation, or forcibly or fraudulently passes such gate, or over such fence, or into such inclosure or building, without having paid the charge demanded for entry therein, shall, for each offense, forfeit to the party injured the sum of twenty-five dollars, in addition to the damages resulting from such wrongful act. 64 v. 182, § 7; S. & S. 187.

§ 3871. Sewerage companies—

A company organized for the purpose of draining the streets, alleys, lots, commons, wharves, landings, or buildings of any city or village in this state, may construct and maintain sewers and drains, and lay conductors or pipe for conveying water and other liquid matter from the lots, houses, and streets, through and under the streets, sidewalks, public highways, alleys, commons, wharves, or landings of any city or village in this state; upon application by such company the council of any city, or the trustees of any village, may grant to it the privilege of exercising its corporate powers within the limits of such city or village, for such terms of years, and upon such conditions and limitations as may

be deemed expedient; and the city council, or the council of the village, may require from the company such reasonable security as they deem necessary for the faithful performance of the duties imposed upon it by law; but no grant shall be made to any company, and no power or privilege shall be conferred upon or exercised by any company, which will interfere with the rights of any other corporation, or any person, and no person shall be taxed without its consent for any drainage or sewerage constructed by any such company; and such companies shall be liable for all damages occasioned by their acts, neglects, or defaults to the rights of persons and other corporations. 53 v. 137, § 5; S. & C, 341.

§ 3872. When municipality must buy out company—

When a city or village which has granted to any such company, for any term, the rights and privileges mentioned in the preceding section, and, at the expiration of the term, fails or refuses, upon petition of the company, to renew the grant, the city or village shall purchase of the company its property, consisting of sewers, drains, and pipes actually laid and constructed, with the appurtenances, and the materials and fixtures appertaining to the same, on hand at the time of the expiration of such term, at a price not exceeding the actual cost thereof, for the use and benefit of the city or village. 53 v. 137, § 5; S. & C. 341.

§ 3873. Municipality may contract with company—

The council of any city, or the council of any village, in which any such company is organized, may contract with the company for the construction and use of such sewers or drains, for draining the streets, alleys, lots, commons, wharves, or grounds within the limits of the municipal corporation; and the city or village shall not use such sewers or drains in any manner except by and with the consent of the company, and in the manner, and upon the terms and conditions, which are mutually agreed upon by the company and the city or village. 53 v. 137, § 6; S. & C. 342.

§ 3874. Company may prescribe rates—

Such companies may prescribe the terms upon which owners and occupants of houses or lots may obtain the use of their sewers and drains for private purposes, and the rate of charge annually for such use, and also the terms upon which the city or village

may use the sewers and drains for public purposes. 53 v. 137, § 7; S. & C. 342.

§ 3875. Powers of municipalities not limited—

Nothing in the four preceding sections shall be construed to prevent any city or village from constructing sewers, or establishing and maintaining a system of sewerage, under the direction and by the authority of the municipal authorities thereof, not interfering, however, with the work of such company. 53 v. 137, § 8; S. & C. 342.

§ 3876. Stock-yard companies—

A company incorporated for the purpose of purchasing or leasing real estate, and erecting thereon pens and buildings for the safe-keeping of live stock intrusted to it on sale, may lease or purchase, and operate, such portion of any railway leading to or connected with its stockyards as may be necessary for the convenient dispatch of its business; but the number of miles so leased or purchased shall not exceed thirty, and such lease or purchase shall not be made without the consent of the holders of a majority of the stock in such company, and in the company leasing or selling such railway. 73 v. 162, § 3.

§ 3877. Transportation companies—

A company organized for the purpose of transporting freight, or for towing purposes, on any of the navigable rivers of this state, or the lakes and navigable rivers bordering thereon, may build, purchase and hold such number of steamboats, barges or other vessels, and such other personal property, and such real estate, in this and other states, as it deems necessary for commencing and conducting its business, and may sell the same, or any part thereof, in such manner and for such purpose as may be prescribed by the rules and regulations of the company, not inconsistent with the laws of this state; and the company may carry any articles of freight or produce, tow any barge or other vessel upon any of the navigable streams in this state, and on any of the lakes, or navigable rivers bordering thereon, and shall be governed by the same laws, not inconsistent with this section, which govern individuals in such employments. 66 v. 39, § 4.

**§ 3878. Companies for transportation of natural gas, oil or water; eminent domain—How right acquired—
Right to occupy public way; how acquired—
Filling of excavations; common carrier—**

A municipal corporation or a company organized for the purpose of transporting natural gas, petroleum or water through tubing or pipes or for the purpose of storing and transporting water, may enter upon any land for the purpose of examining and surveying a line for its tubing and pipes, or for a reservoir, and may appropriate so much thereof as may be deemed necessary for the laying down of such tubing and pipes, and for the erection of tanks, and reservoirs for the storage of water for transportation, and the location of stations along such line, and the erection of such buildings as may be necessary for the purpose aforesaid; such appropriation shall be made and conducted in accordance with the law providing for compensation to the owners of private property appropriated to the use of corporations; and so far as the rights of the public therein are concerned, the county commissioners as to county and state roads, the township trustees as to township roads, and the council of municipal corporations as to streets and alleys, in their respective jurisdiction, may, subject to such regulations and restrictions as they may prescribe, grant to such company the right to lay such tubing and pipe therein; provided, however, the right to appropriate for any of the purposes herein above specified, shall not include or extend to the erection of any tank, station, reservoir or building, or lands therefor, or to more than one continuous pipe, or tubing, or land therefor, in or through a municipal corporation, without the council first consent thereto; provided, however, that no reservoirs for the storage and transportation of water shall be constructed within the corporate limits of any municipal corporation, or any public park, and all excavations, except reservoirs for storage and transportation of water, shall be well filled by such company and so kept by it, in all cases, and such company shall, for the purpose of transporting natural gas, oils and water, be considered and held to be a common carrier, and subject to all the duties and liabilities of such carriers under the laws of this state. 94 O. L. 382.

Where such company converts oil left for storage to its own use, and is

sued, it may counterclaim the agreed price for storage and allowance for evaporation. *Cow Run Tank Co. v. Lehmer*, 41 Ohio St. 384. See note to *State v. Salem Water Co.*, under § 3550.

§ 3879. May hold certain property—

Any such company may take, by purchase or otherwise, and hold, such real and personal estate, and erect or purchase the necessary buildings and machinery for carrying on the business, including all the necessary equipments and appendages of the business, such as tubing, pumps, tanks, telegraph apparatus and engines, as may be necessary to transport oils and water through tubes and pipes. 65 v. 109, § 2; S. & C. 169.

§ 3880. Further powers of such companies—

Any such company or municipal corporation may transport, store, insure and ship natural gas, petroleum or water, and transport and store water, for the purpose of furnishing the same to engineers employed in developing for, or in the production and transportation of petroleum, and for that purpose may lay down, construct and maintain the necessary pipes, tubing, tanks, machinery and arrangements. 94 O. L. 382.

§ 3881. Homes for aged and indigent women—

Corporations designated as the widows' home, and asylum for aged and indigent women, may, in addition to the estates, real, personal or mixed, which they are otherwise allowed by law to hold, take by purchase, gift or devise, and hold, use, dispose of and convey, in all lawful ways, any estate, real, personal or mixed, which may be convenient or necessary for the use of the corporation, or for the investment of its funds; but no part of such estate, nor of the income thereof, shall be used for any purpose or business other than in providing a suitable asylum, the support and maintenance thereof, and the support and maintenance of such aged and indigent women as are admitted into the same under the by-laws thereof. 75 v. 14, § 1.

(§ 3881-1.) Sec. 1. Contract for care and maintenance of indigent, aged or infirm deaf and dumb—State board of charities may order removal of such indigent or infirm persons to home—

That any incorporated association organized for the purpose of

providing a home for deaf and dumb persons may enter into a contract with the board of county infirmiry directors of any county, or with the proper officers of any corporation infirmiry, for the care and maintenance at such home of any deaf and dumb person who may be an inmate of said county or corporation infirmiry, or who may, under the laws of the state, be entitled to admission thereto. And in every such case the said county or corporation infirmiry shall, during the period such person may remain in such home, pay to such association, annually, a sum equal to the per capita cost of maintaining inmates in the said county or corporation infirmiry. Provided, that wherever any such deaf and dumb person is maintained in any county or corporation infirmiry in this state, and who, in the judgment of the board of state charities, should be removed from such infirmiry to a home organized under provision of this section, that said board of state charities may order the removal of said person from said infirmiry to said home; and where any such person is removed on the order of said board of state charities from an infirmiry to said home, then the transportation of said person to said home and his (or her) maintenance shall be paid by the infirmiry directors of said county infirmiry or the proper officers of said corporation infirmiry as heretofore provided in this section. 94 O. L. 369.

§ 3882. Wrecking companies—

Any company or association organized for the purpose of wrecking boats and vessels, and saving the same, and the property thereon, or property lost by damage or injury to boats or vessels, may build, purchase, and hold such number of boats, vessels, diving-bells, and other appliances and property as it deems necessary for commencing and conducting the business of the association, and may sell and dispose of the same, or any part thereof, and contract for salvage or compensation for saving boats, vessels, and other property, and demand, recover, and receive salvage, or such compensation, when entitled thereto by contract or otherwise, and shall be governed by the same laws not inconsistent with this section which govern individuals in such business or employment. 64 v. 44, §§ 2, 4; S. & S. 197, 198.

§ 3883. Fruit companies—

Any company organized for the purpose of cultivating, canning, shipping, and dealing in fruit, may purchase, hold, and convey real and personal property for the purpose of conducting and carrying out the objects of the company, and may hold the same without the state.

§ 3884. Companies for protecting and preserving dead bodies—

Any association organized for the purpose of preserving and protecting bodies of deceased persons before burial may purchase, or take by devise or gift, hold, and convey, real estate not exceeding one acre, and may erect thereon suitable buildings, and construct and maintain vaults, and such other appliances as may be necessary to carry out the objects of such association; and such property shall be exempt from execution, from taxation, and from being appropriated to any other public purpose, if used exclusively for the purposes herein described.

§ 3884a. Authorizing certain corporations to purchase or lease real estate—

A corporation organized for the purpose of constructing and maintaining buildings to be used for hotels, store-rooms, offices, warehouses, factories, shall be authorized to acquire by purchase or lease, and to hold, use, mortgage and lease all such real estate or personal property as may be necessary, for the purpose hereinbefore mentioned; provided, however, that no such corporation shall acquire or mortgage any real or leasehold estate, or lease the same for a period exceeding (with all privileges of renewal) the term of five years, without the consent of the holders of two-thirds of the stock, obtained at a meeting called for that purpose, written notice of which shall have been given to each stockholder, either personally, or deposited in the post-office, properly addressed and duly stamped, not less than ten days before the day fixed for such meeting. Nothing herein shall be construed as authorizing corporations to buy and sell, or to deal in real estate for profit. 86 O. L. 375.

(§ 3471-3.) Sec. 1. Powers of electric light and power companies—

A company organized for the purpose of supplying electricity

for power purposes, and for lighting the streets and public and private buildings of a city, village or town, may manufacture, sell and furnish the electric light and power required therein for such and other purposes, and such companies may construct lines for conducting electricity for power and light purposes through the streets, alleys, lanes, lands, squares and public places of such city, village or town, by the erection of the necessary fixtures, including posts, piers and abutments necessary for the wires, with the consent of the municipal authorities of the city, village or town, and under such reasonable regulations as they may prescribe. Provided, that all wires erected and operated under the provisions of this act shall be covered with a waterproof insulation, and said poles, piers, abutments and wires shall be so located and arranged as not to interfere with the successful operation of existing telegraph and telephone wires.

As to powers of electric light companies, see *Hauss Electric Lighting Power Co. v. Jones Bros. Electric Co.*, 23 B. 137.

(§ 3471-4.) Sec. 2.

The municipal authorities of any city, village or town, in which any electric light company is organized, may contract with any such company for lighting the streets, alleys, lands, lanes, squares and public places in such city, village or town. 83 O. L. 183.

MISCELLANEOUS.

SECTION

4988 and 4991. Service.
5026 to 5030. Where action to be brought.
5033. Change of venue.
5044a to 5052a. Service on corporations.
5855 to 5857. Change of name.

SECTION

6760 and 6761. Quo warranto.
148a. Table of fees for incorporation, etc.
148b. Disposition of fees.
148c and 148d. Requirements of foreign companies.

§ 4988. When attempt equivalent to commencement— Service in such case—Service upon corporation passing into hands of receiver—Railroad company—

An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this chapter, when the party diligently endeavors to procure a service; but such attempt must be followed by service within sixty days. And if the defendant is a corporation, whether foreign or created

under the laws of this state, and whether the charter thereof prescribes the manner and place, or either, of service of process thereon, and such corporation passes into the hands of a receiver before the expiration of said sixty days, then service following such attempt to commence the action may, within said sixty days, be made upon such receiver, or his cashier, treasurer, secretary, clerk or managing agent, or if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such agents or officers of such receiver with the person having charge thereof; and if such corporation is a railroad company, summons may be served upon any regular ticket or freight agent of said receiver, and if there is no such agent, then upon any conductor of said receiver, in any county in the state in which such railroad is located, and the summons shall be returned as if served upon said defendant. 91 O. L. 72.

§ 4991. Saving in case of reversal, etc.—Service upon corporation passing into hands of receiver—Railroad company—

If, in an action commenced, or attempted to be commenced, in due time, a judgment for the plaintiff be reversed, or if the plaintiff fail otherwise than upon the merits, and the time limited for the commencement of such action has, at the date of such reversal or failure, expired, the plaintiff, or, if he die and the cause of action survive, his representatives may commence a new action within one year after such date, and this provision shall apply to any claim asserted in any pleading by a defendant. And if the defendant is a corporation, whether foreign or created under the laws of this state, and whether the charter thereof prescribes the manner and place, or either, of service of process thereon, and such corporation passes into the hands of a receiver before the expiration of said year, then service to be made within said year following such original service or attempt to commence the action may be made upon such receiver or his cashier, treasurer, secretary, clerk or managing agent, or if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such agents or officers of such receiver with the person having charge thereof, and if such corporation is a railroad company, summons may be served upon any regular ticket or freight agent of said receiver, and if there is no such agent, then upon any conductor of such receiver, in any county

in the state in which such railroad is located, and the summons shall be returned as if served upon said defendant. 91 O. L. 72.

Service for railway company cannot be made on ticket agent for receiver. *Collins v. Ry. Co.*, 7 N. P. 270 (C. P.).

**§ 5026. Actions against corporation—Where to bring—
Insurance company—Mining company—**

An action other than one of those mentioned in the first four sections of this chapter, against a corporation created under the laws of this state, may be brought in the county in which such corporation is situate, or has, or had its principal office or place of business, or in which any corporation has an office or agent, or in any county in which a summons may be served upon the president, chairman or president of the board of directors or trustees or other chief officer; but if such corporation is an insurance company, the action may be brought in the county wherein the cause of action, or some part thereof, arose; and if such corporation be organized for the purpose of mining, either exclusively, or in connection with other business, the action may be brought in any county where such corporation owns or operates a mine or mines, and the cause of action, or some part thereof, arose. 93 v. 125.

"May" should be read "must." *Kinsey v. Burgess Works*, 4 N. P. 293 (C. P.).

An Ohio corporation can be sued only in the county in which it has or had its principal place of business, or in which an office or agent is maintained. The word "may" means "must." The appearance of the defendant for the sole purpose of objecting to the jurisdiction, is not an appearance in the action. *Kinsey v. Burgess Steel Co.*, 4 N. P. 293.

This section was not intended to apply to statutory actions in which a different rule or mode of proceeding is specially authorized. *Muskingum Co. Infirmary v. Toledo*, 15 Ohio St. 409, 411.

An action on a policy of life insurance may be brought in the county where the assured died. *Union Central Life Ins. Co. v. Pyers*, 36 Ohio St. 544.

§ 5027. Against railroad and stage companies—

An action against the owner or lessee of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as carrier, and an action against a railroad company, may be brought in any county through or into which such road or line passes. 63 v. 87, § 49; S. & S. 542.

A railroad company may be sued in any county through or into which its road passes, without regard to nature of cause of action. *Railway Co. v. Jewett*, 37 Ohio St. 649. And it is sufficient if the road be held by lease. *Ry. Co. v. McLean*, 1 C. C. 112; affirmed, 19 B. 217.

This section relates solely to the jurisdiction of the person; it is not necessary that the petition should state that its road passes through or into the county where the action is brought. *R. R. Co. v. Morey*, 47 Ohio St. 207.

The company may be served in a county through which its line does not run when properly joined as a co-defendant. *B. & O. R. R. Co. v. McPeck*, 16 C. C. 87.

§ 5028. Against turnpike companies—

An action other than one of those mentioned in the first four sections of this chapter, against a turnpike road company, may be brought in any county in which any part of the road lies. 51 v. 57, § 50; S. & C. 960.

§ 5029. When this chapter does not apply—

When the charter of a corporation created under the laws of this state, prescribes the place where suit must be brought, that provision shall govern. 51 v. 57, § 51; S. & C. 960.

§ 5030. Against nonresident—

An action other than one of those mentioned in the first four sections of this chapter, against a nonsident of this state, or a foreign corporation, may be brought in any county in which there is property of, or debts owing to, the defendant, or where such defendant is found; but if the defendant is a foreign insurance company, the action may be brought in a county where the cause, or some part thereof, arose. S. & C. 960.

The words "foreign corporation," in attachment cases, under section 28 of the justices' code of 1853, mean foreign to the state, not foreign to the county. *Boley v. Ohio L. Ins. & T. Co.*, 12 Ohio St. 139.

The court can acquire no jurisdiction against a nonresident of the state, unless he be personally served or appear, except the action be one in which service by publication can be made. *Williams v. Welton*, 28 Ohio St. 451.

§ 5033. Change of venue in suit by or against a corporation—Cost of summoning jury and jury fees—How paid—

When a corporation having more than fifty stockholders is a party in an action pending in a county in which the corporation keeps its principal office, or transacts its principal business, if the

opposite party make affidavit that he cannot, as he believes, have a fair and impartial trial in that county, and his application is sustained by the several affidavits of five credible persons residing in such county, the court shall change the venue to the adjoining county most convenient for both parties; and the cost of summoning and impaneling a jury, and the fees of said jury sitting in the trial of the case in the court of the county to which the venue is changed, shall be allowed and paid by the commissioners of the county from which said action is sent. 94 O. L. 378.

The statute is constitutional. *Snell v. St. Ry. Co.*, 42 B. 44, reversing 16 C. C. 633. Grounds for belief need not be given in affidavits, and affiants presumed credible unless attacked. *Id.* See also *Sauer v. St. Ry. Co.*, 4 N. P. 252 (Sup. Ct. Cin.); *Stermer v. St. Ry. Co.*, 5 N. P. 419 (Sup. Ct. Cin.), and mem. in 41 B. 209.

The court is clothed with a judicial discretion, and mandamus will not lie to compel the judge to transfer the action. *State v. Wilson*, 12 C. C. 636.

§ 5041. How summons served upon corporation—

A summons against a corporation may be served upon the president, mayor, chairman or president of the board of directors or trustees, or other chief officer; or, if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation, with the person having charge thereof; and if such corporation is a railroad company, whether foreign or created under the laws of this state, and whether the charter thereof describes the manner and place, or either, of service of process thereon, the summons may be served upon any regular ticket or freight agent thereof; or, if there is no such agent, then upon any conductor, in any county in this state, in which such railroad is located, or through which it passes; but if the defendant is an incorporated river transportation company, whether organized under the laws of this or another state, the service of a summons may be upon the master, or other chief officer, of any of its steamboats or other craft, or upon any of its authorized ticket or freight agents, at any port where it transacts business. 65 v. 116, § 66; 76 v. 145, § 10; 94 O. L. 273.

§ 5042. How served upon an insurance company—

When the defendant is an insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency. 51 v. 57, § 67; 94 O. L. 273.

§ 5043. On foreign corporation—

When the defendant is a foreign corporation, having a managing agent in this state, the service may be upon such agent. 51 v. 57, § 68; 94 O. L. 274.

§ 5044a. How served upon foreign corporation in hands of receiver—

When the property in this state of any foreign corporation, railroad or otherwise, is in the possession or control of a receiver appointed by any court, state or federal, at the commencement of any action against said corporation, summons may be served upon any agent of the receiver upon whom valid service could be made under any other provision of this chapter, if the agent was the agent of the corporation itself. 93 O. L. 413.

When service is made upon a subordinate officer, the return must show that no higher officer could be found; if upon a person having charge, that no chief or subordinate officer could be found. *Fee v. Big Sand. Iron Co.*, 13 Ohio St. 563. Service upon the members of the last acting board of directors of a defunct corporation is sufficient. *Warner v. Callender*, 20 Ohio St. 190. Service may be made on a regular ticket agent of a railroad in a county through which its trains run, though on a leased road. *Ry. Co. v. McLean*, 1 C. C. 112; affirmed, 19 B. 217. But service for a foreign railroad company cannot be made upon a mere traveling solicitor of business. *Wilson v. Nor. Pac. R. R. Co.* (Cin. Sup'r Ct.), 16 B. 6. See *Railroad Co. v. Emery*, 17 B. 154, as to service in another state upon president of Ohio corporation.

Joint stock company, under the laws of New York, having substantially the character and power of a corporation, may be served with summons in this state in same manner as corporation. *Express Co. v. State*, 55 Ohio St. 69.

Service for railway company cannot be made on ticket agent of receiver. *Collins v. R. R. Co.*, 7 N. P. 270 (C. P.)

Service upon an insurance company may be made on local agent under § 5046, and on managing agent under § 5045, these sections being cumulative in that respect. *Householder v. Kansas Ass'n*, 6 N. P. 520 (C. P.)

A local agent, who kept an office where he received and forwarded packages for the company, and did all the business incident thereto, was held a "managing agent." *Amer. Express Co. v. Johnson*, 17 Ohio St. 641.

§ 5052a. Service when officer, etc., is non-resident—

Whenever it shall be made to appear to the satisfaction of any court of record in this state, in any action now pending, or hereafter to be brought therein, that any one named as a party defendant is a corporation organized under the laws of the State of Ohio, owning or otherwise interested in real or personal property within the jurisdiction of such court, is a proper party therein, and that there is no officer, agent, or director of such corporation within the State of Ohio upon whom service of summons in said action can be made, it shall be lawful for said court to authorize any person residing in or out of the state to make service of summons on such corporation by delivering to the last known president, or other chief officer or director of such corporation, a copy of the summons therein, and the person making such service shall make affidavit thereto, and forthwith make return to the clerk. That whenever service of summons shall have been so made, the said service shall have the same effect, and shall be taken and held as if made upon said corporation in this state by personal service of such summons upon the proper officer, agent, or director of such corporation upon whom a service of summons is now authorized by law to be made in other cases. 86 O. L. 172.

§ 5587. When receiver appointed—

A receiver may be appointed by the supreme court or a judge thereof, the circuit court or a judge thereof in his circuit, the common pleas court or a judge thereof in his district, or the probate court, in causes pending in such courts respectively, in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and when it is shown that the property or fund is in danger of being lost, removed, or materially injured.

2. In an action by a mortgagee, for the foreclosure of his mortgage, and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been

performed, and the property is probably insufficient to discharge the mortgage debt.

3. After judgment, to carry the judgment into effect.

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply the property in satisfaction of the judgment.

5. In the cases provided in this title, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of equity. 82 O. L. 35.

Appointment of receiver to take possession of defendant's property cannot be made without notice, unless delay will result in irreparable loss. *Railway Co. v. Jewett*, 37 Ohio St. 649.

In suit by receiver of insolvent corporation on subscription for increase of stock, court may direct collection only of subscriber's proportion necessary to discharge debts. *Clarke v. Thomas*, 34 Ohio St. 46.

The appointment of a receiver is an abuse of discretion when the sole object of the suit is to wind up the affairs of corporation, and it appears that full relief may be afforded by injunction. *Railroad Company v. Duckworth*, 2 C. C. 518; affirmed in 21 B. 36. See also *Straman v. North Balt. Waterworks Co.*, 8 C. C. 89, and *Goebel v. Herancourt Brewing Co.*, 7 N. P. 230 (Sup. Ct. Cin.)

See note to *Bacon et al. v. N. W. Stone Co.*, under section 5651.

Where surety for an insolvent corporation brings suit against it, under section 5845, to compel it to pay the indebtedness upon which he is surety by subjecting its property, the appointment of a receiver is authorized by section 5587. *Barbour v. Nat. Ex. Bank*, 45 Ohio St. 133.

Appointment of receiver is not authorized merely because creditors are about to bring action to enforce their claims; nor can a stockholder or director be appointed when circumstances do not amount to consent to appointment of such person. *Bank v. Lakeside Co.*, 19 C. C. 365.

DISSOLUTION OF CORPORATIONS.

SECTION

5651. When corporation may petition for dissolution.

5652. What the petition must contain.

5653. Affidavit to be attached to petition.

5654. Notice of the pendency of the petition.

SECTION

5655. Hearing before the master.

5656. When a judgment for dissolution to be rendered.

5657. Who may be appointed receiver.

5658. Powers of receiver.

5659. Unpaid subscriptions to be collected.

SECTION,

- 5660. Duties of trustees.
- 5661. Transfers pending the action void.
- 5662. Duties of creditors and other persons.
- 5663. Meeting of creditors.
- 5664. How contingent engagements discharged.
- 5665. Receiver's compensation.
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- 5667. How distribution to be made.
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- 5669. Receiver to act on order of court.
- 5670. Account of receiver to court.
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SECTION

- 5677. Petitions under preceding section.
- 5678. Trustees appointed succeed to right of predecessor.
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- 5680. Judgments by or against such corporations may be enforced.
- 5681. Title to property of corporation to pass to trustees.
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- 5685. Judgments for or against may be revived.
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- 5687. Directors may appoint trustees to settle affairs of corporation.
- 5688. Removal and duties of trustees.

§ 5651. When corporation may petition for dissolution—

When a majority of the directors, trustees, or other officers having the management of the concerns of any corporation, or stockholders representing not less than one-third of the capital stock of any corporation, organized under the laws of the state, discover that the stock, property and effects of the corporation have been so far reduced, by losses or otherwise, that it will not be able to pay all just demands to which it may be liable, or to afford a reasonable security to those who may deal with it, or deem it beneficial to the interests of the stockholders that the corporation be dissolved, or when such directors, trustees or other officers are authorized, by a majority of the stockholders, to apply for a judgment as hereinafter provided, or when the objects of the corporation have wholly failed, or are entirely abandoned, or it is impracticable to accomplish such objects, they may apply to the court of common pleas of the county, or the superior court of the city or county, in which the principal place of conducting the business of the corporation is situate, by petition for the dissolution of such corporation, pursuant to the provisions of this chapter. 72 v. 138, § 1.

Dissolution of corporations.—The modes by which a corporation in Ohio may be dissolved are: 1. By the death of its members; 2. Surrender of its

franchises; and 3. A judgment of forfeiture for non-user or abuse. Trustees, etc., v. Manufacturing Co., 9 Ohio, 203. But now, by the provisions of sections 5651, 5673 and 5674, an additional mode is provided.

Ouster for abuse of franchises rests in sound discretion of the court. State ex rel. v. People's, etc., Assn., 42 Ohio St. 579.

Ouster is not retroactive as to transactions in good faith. Society Perun v. City of Cleveland, 43 Ohio St. 481.

Directors may be required to pay the costs of such proceeding. Godley v. Pugh, 29 Ohio St. 438.

Where a canal company has the right to use the bed and waters of a river only for canal purposes, upon ouster from its franchises and dissolution by order of court, the trustees winding up its affairs have no power to convey such rights, but they revert to the proper owners. Day v. R. R. Co., 44 Ohio St. 406.

Upon application under this section, a receiver cannot be appointed until after the order has been made dissolving the corporation. Section 5587 does not apply to such a proceeding. Bacon et al. v. N. W. Stove Co., 5 C. C. 289.

Proceedings under these sections cannot be appealed from the court of common pleas to the circuit court. Brown v. Sayler, 54 Ohio St. 246. See Cronin v. Potter's Co-op. Co., 29 B. 52 (C. P.), and Building Co. v. Rehn, 6 N. P. 185 (Sup. Ct. Cin.).

§ 5652. What petition must contain—

Such application shall contain a statement of the reasons which induce the applicants to desire a dissolution of the corporation, and there shall be annexed thereto—

1. A full, just and true inventory of all the estate, both real and personal, in law and equity, of the corporation, and of all the books, vouchers and securities relating thereto.

2. A full, just and true account of the capital stock, if any, of the corporation, specifying the names of the stockholders, their residence, when known, the number of shares belonging to each, the amount paid in upon such shares, respectively, and the amount still due thereon.

3. A statement of all the incumbrances on the property of the corporation, and of all engagements entered into by it, which have not been fully satisfied or canceled, specifying the place of residence of each creditor, and of every person to whom such engagements were made, if known, and if not known, the fact to be so stated, and the sum owing to each creditor, the nature of each debt or demand, and the true cause and consideration of such indebtedness. 64 v. 153, § 3; S. & S. 243.

An Ohio corporation has no right to refuse to make true disclosure of its

condition in an action by stockholders under these sections; an order upon the officers requiring them to file an inventory, etc., invades no legal right. *Armstrong, Receiver, v. Herancourt Brewing Co.*, 53 Ohio St. 467, reversing 6 C. C. 468. See also *Fitch v. Sprague Carriage Co.*, 19 C. C. 296.

§ 5653. Affidavit to be attached to petition—

To every such petition there shall also be annexed an affidavit of the applicants, that the facts stated in the application, and the accounts, inventories, and statements contained therein or annexed thereto, are just and true, so far as they know, or have the means of knowing. 64 v. 153, § 3; S. & S. 243.

§ 5654. Notice of the pendency of the petition—

Upon such petition, accounts, inventories, and affidavits being filed, an order shall be entered requiring all persons interested in the corporation to show cause, if any they have, why it should not be dissolved, before some referee or master commissioner appointed by the court, and to be named in the order, at a time and place therein to be specified, not less than three months from the date thereof; and a notice of the contents of such order shall be published once in each week for three weeks successively, in some newspaper published and of general circulation in the county wherein the principal place of business of the corporation is situated. 64 v. 153, §§ 4, 5; S. & S. 243, 244.

§ 5655. Hearing before the master—

On the day appointed in the order, the referee or master shall proceed to hear the allegations and proofs of such parties, take testimony in relation thereto, and, with all convenient speed, report the same to the court, with a statement of the property, effects, debts, credits, and engagements of the corporation, and of all other matters and things pertaining to its affairs. 64 v. 153, § 6; S. & S. 244.

§ 5656. When a judgment for dissolution to be rendered—

When the report is made, if it appears to the court that the corporation is insolvent, or that a dissolution thereof will be beneficial to the stockholders and not injurious to the public interest, or that the objects of the corporation have wholly failed, or been entirely abandoned, or that it is impracticable to accomplish such

objects, a judgment shall be entered dissolving the corporation, and appointing one or more receivers of its estate and effects; and the corporation shall thereupon be dissolved and shall cease. 64 v. 153, § 7; S. & S. 244.

§ 5657. Who may be appointed receiver—

A director, trustee, or other officer of the corporation, or any of its stockholders, may be appointed a receiver; and a receiver shall, before entering upon the duties of his appointment, give such security to the state, and in such penalty, as the court shall direct, conditioned for the faithful discharge of the duties of his appointment, and for the due accounting for all the money received by him. 64 v. 153, § 8; S. & S. 244.

§ 5658. Powers of receiver—

Such receiver shall be vested with all the estate, real or personal, of the corporation, from the time of his having filed the security hereinbefore required, and shall be trustee of such estate for the benefit of the creditors of the corporation and its stockholders; and he shall have all the power and authority conferred by law upon trustees to whom assignments are made for the benefit of creditors. 64 v. 153, §§ 9, 10; S. & S. 244.

See note to section 3593.

If the receiver does not attempt to recover property fraudulently conveyed before dissolution, a creditor may bring suit, making the receiver party, and the court will make all orders as if the receiver had begun the action. *Monitor Furnace Co. v. Peters*, 40 Ohio St. 575.

§ 5659. Unpaid subscriptions to be collected—

If there be any sum remaining due upon any share of stock subscribed in the corporation, the receiver shall immediately proceed and recover the same, unless the person so indebted is wholly insolvent, and for that purpose may commence and prosecute an action for the recovery of such sum, without the consent of any creditor of the corporation. 64 v. 153, § 11; S. & S. 244.

§ 5660. Duties of receiver—

The receiver shall, immediately on his appointment, give notice thereof, which shall contain the same matters required by law in notices of trustees of insolvent debtors, and in addition thereto it shall notify all persons holding any open or subsisting contract

of the corporation to present the same to him, in writing and in detail, at the time and place in such notice specified, which shall be published for three weeks in some newspaper printed and of general circulation in the county wherein the principal place of business of the corporation is situate. 64 v. 153, § 12; S. & S. 244.

§ 5661. Transfers pending the action void—

All sales, assignments, transfers, mortgages, and conveyances, of any part of the estate, real or personal, including things in action, of every description, made after the petition for the dissolution of the corporation is filed, in payment of or as security for any existing or prior debt, or for any other consideration, and all judgments confessed by such corporation after that time, shall be absolutely void as against the receiver appointed on such petition, and as against the creditors of the corporation. 64 v. 153, § 13; S. & S. 244.

A mortgage cannot be assigned by officers of the company after proceedings for dissolution are begun. *Hinman, Receiver, v. Ryan*, 3 C. C. 529.

§ 5662. Duties of creditors and other persons—

After the first publication of the notice of the appointment of a receiver, every person, having possession of any property belonging to the corporation, and every person indebted thereto, shall account and answer to the receiver for the amount of such debt, and for the value of such property; and all the provisions of law in respect to trustees of insolvent debtors, the collection and preservation of the property of such debtors, the concealment and discovery thereof, and the means of enforcing such discovery, shall be applicable to such receiver, and to the property of the corporation, except as otherwise provided herein. 64 v. 153, §§ 14, 15; S. & S. 245.

§ 5663. Meeting of creditors—

The receiver shall call a general meeting of the creditors of the corporation, within four months from the time of his appointment, at which all accounts and demands for and against the corporation, and all its open and subsisting contracts, shall be ascertained and adjusted, as fully as may be, and the amount of money in the hands of the receiver declared; and he may settle

controversies that arise between him and the debtors or creditors of the corporation by arbitrament or reference. 64 v. 153, §§ 15, 16; S. & S. 245.

§ 5664. How contingent engagements discharged—

If there be any open and subsisting engagements on contracts of the corporation, which are in the nature of insurance, or contingent engagements of any kind, the receiver may, with the consent of the party holding such engagements, cancel and discharge the same by refunding to such party the premium or consideration paid thereon by the corporation, or so much thereof as shall be in the same proportion to the time which remains of any risk assumed by such engagements, as the whole premium bears to the whole term of such risk; and, upon such amount being paid by the receiver to the person holding or being the legal owner of such engagement, it shall be deemed canceled, and discharged as against the receiver. 64 v. 153, § 17; S. & S. 245.

§ 5665. Receiver's compensation—

The receiver shall, in addition to his actual disbursements, be entitled to such commissions as the court shall allow, not exceeding the sum allowed to executors or administrators, as well as reasonable counsel fees for services rendered him. 64 v. 153, § 18; S. & S. 245.

§ 5666. Receiver to retain money for certain purposes—

The receiver shall retain, out of the money in his hands, a sufficient amount to pay the sums which he is hereinbefore authorized to pay, for the purpose of canceling and discharging any open or subsisting engagements; and, if any suit be pending against the corporation or the receiver, for any demand, he may retain the proportion which would belong to such demand if established, and the necessary cost of the proceedings, to be applied according to the event of such suit, or to be distributed in a second or other dividend. 64 v. 153, §§ 19, 20; S. & S. 245.

§ 5667. How distribution to be made—

The receiver shall distribute the residue of the money in his hands in the payment of obligations of the corporation which

have been exhibited by creditors, and ascertained, in the following order:

1. Debts entitled to a preference under the laws of the United States.

2. Mortgages, judgments, and other liens on the real estate of the corporation, in the order of their priority.

3. Debts which are liens upon the capital stock or property of the corporation, other than real estate, in the order of their priority, and the extent of the value of the stock or other property on which they are liens. 64 v. 153, § 21; S. & S. 245.

§ 5668. When dividend may be made—

The receiver may, from time to time, make dividends of the money in his hands, among the creditors of the corporation, until they are paid in full; but no dividend shall be made to the stockholders of the corporation until after the final dividend to creditors; and if, after such final dividend is made, there remain any surplus in the hands of the receiver, he shall distribute the same among the stockholders of the corporation, in proportion to the respective amounts paid in by them severally on their shares of stock. 64 v. 153, §§ 22, 23; S. & S. 246.

§ 5669. Receiver to act on order of court—

The receiver shall be subject to the direction and control of the court as to the time of making dividends, both to the creditors and stockholders of the corporation, and as to the time of closing up the concerns of the corporation, and rendering his final accounts, and may be compelled to account at any time; and he may be removed by the court, and any vacancy created by such removal, or by death, or otherwise, may be filled by the court. 64 v. 153, §§ 24, 25; S. & S. 246.

§ 5670. Account of receiver to court—

When required by the court, the receiver shall render a full and accurate account of all his proceedings to the court, on oath, which may be referred to a referee or master commissioner to examine and report thereon; but before he renders any such account he shall insert a notice of his intention to present the same, once a week, for three consecutive weeks, in some newspaper printed and of general circulation in the county wherein the principal place of business of the corporation is situate, specifying the

time and place at which such account will be rendered. 64 v. 153, §§ 26, 27; S. & S. 246.

§ 5671. Report of referee on receiver's account—

The referee to whom such account is referred shall hear and examine the proofs, vouchers, and documents offered for or against the same, and shall report thereon fully to the court; and when the report is made, the court shall hear the allegations of all concerned therein, and shall allow or disallow the account, and may decree the same to be final and conclusive upon all the creditors of the corporation, upon all persons who have claims against it, upon any open or subsisting engagement, and upon all the stockholders of the corporation. 64 v. 153, §§ 28, 29; S. & S. 246.

§ 5672. Further duties of receiver—

The receiver shall also account, from time to time, in the same manner, and with like effect, for all money which comes to his hands after such account is rendered, and for all money retained by him for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends. 64 v. 153, § 29; S. & S. 246.

§ 5673. Dissolution of manufacturing or mining company when stockholders petition therefor—

When stockholders owning one-fifth or more of the paid-up stock of a corporation organized for manufacturing or mining file in the office of the clerk of one of the courts mentioned in section *fifty-six hundred and fifty-one*, their petition containing the statement that the corporation is insolvent, or that the dissolution thereof will be beneficial to the stockholders, or that the objects of the corporation have wholly failed or been entirely abandoned, or that it is impracticable to accomplish such objects; or that the profits of the business are being diverted from the best interests of the stockholders equally or that the business of the corporation can not be profitably conducted and that they therefore desire a dissolution of the corporation the court shall, if it deem it beneficial to the interest of the stockholders make an order requiring the officers of the corporation within reasonable time to file in court the inventories, accounts and statements required by section *fifty-six hundred and fifty-two* and upon the filing thereof the

court shall proceed as provided in section *fifty-six hundred and fifty-four* requiring all persons interested in the corporation to show cause if any they have why such corporation should not be dissolved and the court shall, if it deem it beneficial to the interests of the stockholders, adjudge the dissolution of the corporation in conformity with the provisions of this chapter made upon finding that the statements contained in the petition are true and upon such proceeding being had such other and further proceeding shall, in the judgment of the court, be had for the final settlement and adjustment of the affairs of the corporation as are hereinbefore provided should be had. 92 O. L. 130.

For questions of practice relating to appointment of receiver, etc., under this section, see *Mercantile Trust Co. v. Etna Iron Works*, 4 C. C. 579. Owner of stock by transfer not entered on company's books can not petition for dissolution. *Armstrong v. Herancourt Brewing Co.*, 26 C. 39 (C. P.).

§ 5674. How certain corporations may surrender charter—

When a majority of the directors, trustees, or other officers having the management of the concerns of any corporation, become satisfied that the objects of the corporation cannot be accomplished, and no installment of the capital stock of the corporation has been paid, and no investments have been made, and no debts incurred which are unpaid, they, or the president of the board of directors, trustees, or other officers, may call a meeting of the stockholders of the corporation at such time and place as he or they may designate, by publication in some newspaper of general circulation in the county wherein the principal office of the corporation is located; and if a majority in amount of the stockholders present at such meeting, in person or by proxy, decide that the objects of the corporation cannot be accomplished, the corporation shall thereupon be dissolved, and shall cease. 66 v. 94, § 1.

§ 5675. Directors at time of dissolution may settle affairs of corporation—

Upon the dissolution of a corporation, by the expiration of the term of its charter, or otherwise, and unless other persons be appointed by the legislature, or by the stockholders, directors, or trustees of the corporation, or by a court of competent authority, the directors, trustees, or managers of the affairs of such corporation, acting last before the time of its dissolution, by whatever name they may be known in law,

and their survivors, shall be the trustees of the creditors and stockholders of the dissolved corporation, and shall have full power to settle the affairs of the same, collect and pay the outstanding debts, and divide among the stockholders the money and other property remaining, in proportion to the stock of each stockholder paid up after the payment of debts and necessary expenses; the persons so constituted trustees may sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of the corporation, describing it by its corporate name, and they shall be jointly and severally responsible to the creditors and stockholders of the corporation, to the extent of its property and effects that come into their hands; such trustees may be made or become parties to any action by or against the corporation; and all liens of judgments existing at the time of the dissolution, either in favor of or against the corporation, shall continue in force in the same manner as if the dissolution had not taken place. 40 v. 67, § 14; 48 v. 90, § 5; S. & C. 363 and 366.

A warrant of attorney given to a bank for the entry of judgment may be used by the trustees provided by this section after its charter has expired; but the trustees must sue in their collective name, and not in their individual names. *Martin v. Belmont Bank*, 13 Ohio, 250.

§ 5676. When the last board is without a quorum—

When the last board of directors or trustees of an expired or dissolved corporation becomes unable, by the refusal or neglect of a part of such trustees to act, or for want of a quorum, to act as trustees for closing the affairs of the corporation, any number of such last board of directors or trustees may apply to the court of common pleas of the proper county to declare vacant the places of such directors or trustees as refuse or neglect to act, and such court may empower the remaining directors or trustees, not less than two in number, or appoint any other number of persons not exceeding three, to perform the duties of trustees under the preceding section. 47 v. 15, § 1; S. & C. 365.

§ 5677. Petitions under preceding sections—

All applications made under the preceding section shall be by petition, and the court hearing the same may, on the same petition, make needful orders against any former trustees, or against any assignees of such corporation, for the conveyance of property by them held, and for the assignment of all rights in them vested,

and also for the delivery of all books and papers touching the affairs of the corporation, which order may be enforced by process, or by its terms operate as a conveyance and transfer. 47 v. 15, § 2; S. & C. 365.

§ 5678. Trustees appointed succeed to rights of predecessors—

The trustees so appointed; and all successors of such trustees, shall succeed to all the rights vested in their predecessors, whether trustees or assignees: and all securities and effects by them held or acquired, and all judgments recovered, whether in favor of the corporation to which they succeed, or in the names of the trustees of such corporation, shall inure to the succeeding trustees, and pass by operation of law as fully as if the same were assigned. 47 v. 15, § 3; S. & C. 365.

§ 5679. No action shall abate by dissolution of corporation—

No action pending in any court in favor of or against any corporation shall be discontinued or abate by the dissolution of the corporation, whether the dissolution occur by the expiration of its charter or otherwise; but all such actions may be prosecuted to final judgment by the creditors, assignees, receivers, or trustees having the legal charge of the assets of the corporation, in its corporate name. 41 v. 52, § 1; 40 v. 67, § 14; S. & C. 363, 364.

For decisions under the former statutes, see *Miami Exporting Company v. Gano*, 13 Ohio 269; *Stetson v. Bank*, 2 Ohio St. 167; *Same v. Same*, 12 Ohio St. 577; *Renick v. Bank*, 13 Ohio, 298.

§ 5680. Judgments by or against such corporations may be enforced—

Upon all judgments in favor of or against any such corporation, whether such judgments exist at the time of the dissolution, or are obtained afterward in actions pending at the time of the dissolution, execution may be had, and satisfaction or performance of the same enforced, by the creditors, assignees, receivers, or trustees, having the legal charge of the assets of the dissolved corporation, in the corporate name of the dissolved corporation. 41 v. 52, § 2; S. & C. 364.

§ 5681. Title to property of corporation to pass to trustees—

The title to all real estate belonging to any such corporation shall, at the time of the dissolution of the same, pass to the trustees of the corporation, who may sell and dispose of the same in such manner, and upon such terms, as they deem best for the interest of the creditors and stockholders, and, upon any such sale, make a good and sufficient deed therefor. 41 v. 52, § 4; S. & C. 364.

§ 5682. Trustees personally liable for an abuse of trust—

The trustees of any such corporation shall be subject to the control of the court of common pleas, and be liable to be sued on behalf of any person interested, on account of any neglect or omission of duty, or abuse of trust; in case of the removal of any such trustee by the court for an abuse of trust, it may appoint a suitable person to fill the vacancy; and any such trustee may, for reasonable cause, upon the application of any creditor or stockholder, be required by the court to give bond and security, in such amount, and subject to such conditions, as it may direct. 41 v. 52, § 5; S. & C. 364.

§ 5683. Dissolved corporation may prosecute action in its own name—

A corporation may, at any time after its dissolution, whether the dissolution occur by the expiration of its charter or otherwise, prosecute any action in and by its corporate name, for the use of the party entitled to receive the proceeds of such action, upon any and all causes of action accrued, or which, but for such dissolution, would have accrued, in favor of the corporation, in the same manner, and with the like effect, as if it were not dissolved. 48 v. 90, § 1; S. & C. 365.

§ 5684. May be sued by corporate name—Service of process—

Any such dissolved corporation may be sued by its corporate name, for or upon any cause of action accrued, or which, but for the dissolution, would have accrued against it, in the same manner, and with the like effect, as if it were not dissolved; and all process by which an action is instituted against such corpora-

tion may be served by the sheriff, or other proper officer, by delivering to any one of the assignees, trustees, receivers, or persons having charge of its assets, a copy thereof, or by leaving such copy at the residence of any such assignee, trustee, receiver, or person. 48 v. 90, § 2; S. & C. 366.

Corporation remains liable, notwithstanding dissolution, in damages for wrongful discharge of an agent before dissolution on petition of its stockholders. *The Tiffin Glass Co. v. Stoehr*, 54 Ohio St. 157.

§ 5685. Judgments for or against may be revived—

Judgments in favor of or against a dissolved corporation, whether rendered before or after its dissolution, and which become dormant, may be revived in favor of or against it, as the case may be, in and by its corporate name, in the same manner, and with the like effect, as if the corporation were not dissolved; and in all cases of such judgments against any such corporation, the writ of summons or other process shall be served in the manner prescribed in section *fifty-six hundred and eighty-four*. 48 v. 90, § 3; S. & C. 366.

§ 5686. Error may be prosecuted on judgments for or against—

Petitions in error upon judgments may be prosecuted in favor of or against any such dissolved corporation, and by its corporate name, in the same manner, and with the like effect, as if it were not dissolved; and process thereon against it shall be served in the manner prescribed in section *fifty-six hundred and eighty-four*. 48 v. 90, § 4; S. & C. 366.

§ 5687. Directors may appoint trustees to settle affairs of corporation—

The board of directors or other officers having the control and management of any corporation in this state, may appoint three trustees to adjust and settle the affairs of such corporation, and the trustees so appointed shall be authorized to use the corporate name of the corporation, for such period as may be necessary for the adjustment and settlement of its affairs, by suit or otherwise. 50 v. 272, § 2; S. & C. 367.

§ 5688. Remova and duties of trustees—

The trustees so appointed shall report annually to the stockholders of the corporation a full and succinct statement of its affairs; and a majority in interest of the stockholders may remove a trustee, or appoint a person to a vacancy occasioned by death, resignation, or removal of a trustee. 50 v. 272, §§ 3, 4; S. & C. 367.

§ 5855. Proceeding to change name of corporation—

The directors or trustees of a corporation incorporated in this state may file a petition in the court of common pleas of the county in which its principal office is located, or, if it has no principal office, in the county in which it is situate, for a change of name of such corporation; and the court, upon being satisfied that thirty days' notice of the object and prayer of the petitioners has been given, by publication in a newspaper of general circulation in the county, and upon good cause shown, shall order the change of name as prayed for. 51 v. 293, §§ 1, 2; 50 v. 274, § 77; S. & C. 309, 317.

§ 5856. Copy of order to be filed, and publication made—

A copy of the order of court shall be filed with the secretary of state, if the articles of incorporation were filed in his office, or with the recorder of the county, if the certificate was filed in his office; and in either case a copy of the order shall be published in some newspaper of general circulation in the county. 51 v. 293, § 3; 50 v. 274, § 77; S. & C. 309, 317.

§ 5857. Effect of change of name of corporation—

When the provisions of the last section have been complied with, such corporation shall thereafter be known by such new name, and shall have all the powers, and be subject to the same restrictions, as if no change of name had been made; and no such change of name shall affect the rights of such corporation, or of any individual, or other corporation. 51 v. 293, § 4; 50 v. 274, § 77; S. & C. 309, 317.

§ 6760. When proceedings in quo warranto may be instituted against a person—

A civil action may be brought in the name of the state—

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises, a public office, civil or military, or a franchise, within this state, or an office in a corporation created by the authority of this state.

2. Against a public officer, civil or military, who does or suffers an act which, by the provisions of law, works a forfeiture of his office.

3. Against an association of persons who act as a corporation within this state without being legally incorporated. 36 v. 68, § 1; S. & C. 1264.

It is not necessary that the association, or persons composing it, avow a purpose to act as a corporation, or assume to do so; it is sufficient if the acts are such as appertain to corporations, or are done after the manner of corporations. *State v. Ackerman*, 57 Ohio St. 163.

§ 6761. Quo warranto against a corporation—

A like action may be brought against a corporation—

1. When it has offended against a provision of an act for its creation or renewal, or any act altering or amending such acts.

2. When it has forfeited its privileges and franchises by non-user.

3. When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges and franchises.

4. When it has misused a franchise, privilege, or right conferred upon it, by law, or when it claims or holds by contract or otherwise, or has exercised a franchise, privilege, or right in contravention of law. 78 O. L. 43; S. & C. 1266.

For procedure in such cases, and rights and duties of stockholders, see sections 6762 to 6793.

Where a railroad company builds a line unsuited to public wants, but adapted only to coal mines in which its stockholders are interested, it has misused its powers, etc. *State v. Ry. Co.*, 40 Ohio St. 504.

Whether corporation should be ousted for misuse of its franchise, is for sound discretion of the court. *State v. People's Mut. Ben. Ass'n*, 42 Ohio St. 579; *State v. Capital City Dairy Co.*, 43 B. 353. Ouster is limited to five years from commission of the offense. *State v. R. R. Co.*, 50 Ohio St. 239.

Fixing a rate of freight for oil in tank cars, lower than the rate in barrels of car load lots, is exercising "a franchise, privilege or right in contravention of law." *State v. Ry. Co.*, 47 Ohio St. 130. That such rate relates to inter-state traffic, does not prevent the court from correcting the misuser or usurpation. *Id.*

When a foreign corporation, doing business in this state, is exercising its franchises in contravention of the laws thereof, it may be ousted therefrom

by proceedings in *quo warranto*. State v. W. U. M. Life Ins. Co., 47 Ohio St. 167; State v. Ins. Co., 49 Ohio St. 440.

Removal of plant and board of directors to another state does not *ipso facto* dissolve an Ohio corporation. Latimer v. Mosaic Glass Co., 13 C. C. 163.

Quo warranto lies for violation of the act prohibiting "trusts." Sec. (4427-1 to 12) 93 v. 143.

An action in *quo warranto* will lie against a railroad corporation to contest its claim to exercise a right or privilege to or in the canal lands of the state. Neither the five years' nor the twenty years' limitation prescribed in section 6789, bars an action in *quo warranto* where its object is to oust a corporation from an unwarranted claim to a right or privilege in lands belonging to the state. Ohio v. Ry. Co., 53 Ohio St. 189.

§ 148a. Fees to be charged by secretary of state for official services—

The secretary of state shall hereafter charge and collect the following fees for official services:

1. For filing the articles of incorporation of any corporation whose capital stock is ten thousand dollars or under, ten dollars; of a corporation whose capital stock is over ten thousand dollars, one-tenth of one per cent upon the authorized capital stock of such corporation.

2. For filing a certificate of increase of the capital stock of any corporation having a capital stock where the amount of the increase is ten thousand dollars or under, ten dollars; where the amount of increase is over ten thousand dollars, one-tenth of one per cent upon the proposed amount of the increased capital.

3. For filing articles of agreement of consolidation of corporations having a capital stock, the following fees shall be collected by the secretary of state: Said articles of agreements of consolidation shall be treated as the articles of incorporation of the new consolidated corporations created by such articles or agreements of consolidation, and the fees for filing such articles or agreements of consolidation shall be the same in each case as hereinbefore set forth for the filing of articles of incorporation of a corporation having the same amount of capital stock, as is provided for by the articles or agreements of consolidation for the new consolidated corporation, created by any such articles or agreement of consolidation; and in fixing the amount of such fees, no credit shall be allowed for fees previously paid by any of the constituent corporations, parties to such consolidation, but the same shall be determined solely by the amount of capital stock of the new cor-

poration created by such articles or agreements of consolidation.

4. For filing the articles of incorporation of any mutual insurance corporation not having a capital stock, or of any other mutual corporation not organized strictly for benevolent or charitable purposes and having no capital stock, or of any corporation organized for any of the purposes mentioned in section *thirty-six hundred and thirty* of the Revised Statutes of Ohio, or in the sections supplementary thereto, twenty-five dollars, save and except as hereinafter provided.

5. For filing the articles of incorporation of corporations formed for religious, benevolent, or literary purposes; or of such corporations as are not organized for profit, have no capital stock, and are not mutual in their character; or of religious or secret societies, or of societies or associations composed exclusively of any class of mechanics, express, telegraph, railroad, or other employes, formed for the mutual protection and relief of the members thereof and their families exclusively, two dollars.

6. For filing the articles of incorporation of corporations formed for the purposes named in section *thirty-eight hundred and thirty-three* of the Revised Statutes, ten dollars; for filing a certificate of the increase of the capital stock of any such corporation, five dollars.

7. For filing a certificate of the reduction of the capital stock of any corporation, five dollars.

8. For filing a copy of the decree of court, changing the name of any corporation, five dollars.

9. For filing a certified copy of the acceptance of any corporation incorporated prior to the adoption of the present constitution, of any of the provisions of the Revised Statutes, five dollars.

10. For filing an amendment to the articles of incorporation of any corporation, twenty cents a hundred words, to be in no case less than five dollars.

11. For filing for a railroad company a certificate of extension of line, a certificate of change of termini, a certificate of the adoption or change of location, a certificate of the intention of the corporation to construct a branch line, or a certificate of change of route, twenty cents a hundred words, to be in no case less than five dollars.

17. For filing a certificate of the extension of purpose, or change of domicil, of any corporation, five dollars.

13. For filing other certificates not herein enumerated, except certificates of election, for filing which no charge shall be made, twenty cents a hundred words, to be in no case less than five dollars.

14. For filing the copy of papers evidencing the incorporation of any municipal corporation, the annexation of territory by any municipal corporation, or the advancement or reduction in grade of any municipal corporation, five dollars, to be paid by the corporation, the petitioners therefor, or their agent.

15. For filing the certificate of subscription required to be filed by section *thirty-two hundred and forty-four* of the Revised Statutes, two dollars.

16. For filing a name, or names or initials by manufacturers, bottlers and dealers in ginger ale, seltzer water, soda water, mineral water and other beverages, under the act of April 9, 1880 (77 O. L. 140), five dollars.

17. For making every certificate under the great seal of the state, one dollar.

18. For recording miscellaneous records, papers, or other documents, required by law to be recorded in the office of the secretary of state, twenty cents a hundred words.

19. For making copies of articles of incorporation, and for making copies in other cases, the fees provided for in original section *one hundred and forty-eight* of the Revised Statutes shall be charged; and all fees herein established shall be paid into the state treasury as provided in said original section; and the secretary of state shall neither file nor record any of the articles of incorporation, certificates, or other papers herein above referred to, unless the fees for filing same are first duly paid. 86 O. L. 33. Took effect May 1, 1889.

This a valid law, and applies to articles of agreement of consolidation between an Ohio company and a company or companies of another state, as well as to articles of consolidation between Ohio companies only. *Ashley v. Ryan*, 49 Ohio St. 504.

§ 148b. Disposition of fees—Action to recover fees paid under protest—

After retaining of the fees collected in his office the sum prescribed in section *one hundred and forty-eight*, the secretary of state is authorized and it is hereby made his duty, to pay into the state treasury to the credit of the general revenue fund for

general revenue purposes, all fees which have been paid or may hereafter be paid under section 148a, whether the same be paid under protest or not; and in all cases where fees paid under protest, to recover which while held by him suit would lie against the secretary of state, are so paid into the state treasury, actions to recover such fees shall be brought against the State of Ohio and not against the secretary of state, permission being hereby granted to maintain actions for such purposes against the state instead of the secretary of state, but only in the cases and to the extent that such actions might be maintained against the secretary of state, if the fees were still held by him. Service of process in such cases shall be made on the attorney-general, who shall represent the state and protect its interests. 89 O. L. 325.

§ 148c. Foreign corporation to file statement—Fee charged by secretary of state—Exceptions—Appeals—Penalty for failure to comply—Suits to compel compliance—Requirements of corporations when capital stock is increased—Fees to be paid into state treasury—Not liable to attachment—Stockholder of corporation taxed in accordance with this act need not list shares for taxation—When stockholder required to list proportionate share of stock—Penalty for acting as agent of corporation failing to comply with act—

Every foreign corporation, incorporated for purposes of profit, now or hereafter doing business in this state and owning or using a part or all of its capital or plant in this state, shall, within thirty days after the passage of this act, or, in case of a company hereafter coming into this state, then before it proceeds to do any business in this state, under oath of the president, secretary, treasurer, superintendent or managing agent in this state of such corporation, make and file with the secretary of state, a statement, in such form as the secretary of state may prescribe, containing the following facts:

1. The number of shares of authorized capital stock of the company and the par value of each share.
2. The name and location of the office or offices of the company in Ohio, and the name and address of the officers or agents of the company in charge of its business in Ohio.

3. The value of the property owned and used by the company in Ohio, where situate, and the value of the property of the company owned and used outside of Ohio.

4. The proportion of the capital stock of the company which is represented by property owned and used and by business transacted in Ohio.

From the facts thus reported, and any other facts coming to his knowledge bearing upon the question, the secretary of state shall determine the proportion of the capital stock of the company represented by its property and business in Ohio, and shall charge and collect from the company, for the privilege of exercising its franchises in Ohio, one-tenth of one per cent upon the proportion of the authorized capital stock of the corporation, represented by property owned and used and business transacted in Ohio, being the same fee required to be paid by corporations formed under the laws of Ohio. Upon the payment of the said amount, the secretary of state shall issue to the foreign corporation a certificate that such corporation has complied with the laws of Ohio, and is authorized to do business therein, stating the amount of its entire capital and the proportion of which is represented in Ohio. Provided, this section shall not apply to foreign insurance, banking, savings and loan, or building and loan companies, or to foreign co-operative or investment companies organized to sell certificates or debentures on the installment or partial payment plan, or companies doing business on the service dividend plan, who have deposited with the treasurer of the State of Ohio securities satisfactory to him of the value of not less than twenty-five thousand dollars, and who shall annually thereafter deposit securities equal in value to ten per cent of the gross receipts on the amount of business done in Ohio for the preceding year, until the whole amount so deposited has reached the sum of \$100,000 for the protection of the holders of said certificates or debentures, or to express, telegraph, telephone, railroad, sleeping car, transportation or other corporations engaged in Ohio in interstate commerce business; or to foreign corporations, entirely nonresident, soliciting business, or making sales, in this state by correspondence or by traveling salesmen. Any foreign corporation shall have the right, on application, to be heard by the secretary of state touching the matter of the determination of the proportion of its capital stock represented by

property used and business done in Ohio. Any corporation aggrieved by the decision of the secretary of state, may, within ten days, appeal to the auditor of state, the treasurer of state and the attorney-general, whose decision in the matter shall be final. Every foreign corporation, subject to the provisions of this section, which shall neglect or fail to comply with its requirements, shall be subject to a penalty of one thousand dollars, and an additional penalty of one thousand dollars for every month that it continues to transact any business in Ohio, without complying with the requirements of this section, to be recovered by action in the name of the state, and on collection, paid into the state treasury to the credit of the general revenue fund. The attorney-general, on the request of the secretary of state, shall institute such action in the court of common pleas of Franklin county, or of any county in which such corporation has an office or place of business, as he prefers. No foreign corporation subject to the provisions of this section, shall maintain any action in this state upon any contract made by it in this state after the time fixed by this act for a compliance by such corporation with its requirements, until it shall have complied with the requirements of this act and procured the requisite certificate from the secretary of state. Every corporation which has filed its statement and paid the privilege tax under this section, and which thereafter shall increase the proportion of its capital stock represented by property used and business done in Ohio, shall, within thirty days after such increase, file an additional statement with the secretary of state, and pay a fee of one-tenth of one per cent upon the amount of increase of its capital stock represented by property owned or business done in Ohio. All fees collected by the secretary of state under this section shall be paid by him into the state treasury to the credit of the general revenue fund. Every corporation subject to the provisions of this section, which complies with its requirements, shall not be subject to process of attachment under section *fifty-five hundred and twenty-one*, Revised Statutes, or any law of Ohio, upon the ground that it is a foreign corporation or a nonresident of this state. And in all cases where the property of any such corporation in this state shall be taxed in the name of such corporation, and such corporation annually, before the 25th day of April, makes a return to the sec-

retary of state showing the aggregate amount of all its capital stock owned or controlled by residents of Ohio, together with the names and addresses of such stockholders, with the number of shares owned by each, on the day preceding the second Monday of April, and the aggregate amount of such capital stock owned or controlled by residents of Ohio does not exceed the aggregate amount of the property returned for taxation in the name of such corporation in Ohio, the stockholders of such company shall not be required to list for taxation any share or shares of the capital stock of such corporation. In all cases where the property of any such corporation in this state shall be taxed in the name of such corporation, and such corporation annually, before the 25th day of April, makes a return to the secretary of state showing the aggregate amount of all its capital stock owned or controlled by residents of Ohio, together with the names and addresses of such stockholders, with the number of shares owned by each, on the day preceding the second Monday of April, and the aggregate amount of all of the capital stock of such corporation owned or controlled by residents of Ohio exceeds the aggregate amount of the property returned for taxation in the name of such corporation in Ohio, the stockholders of such corporation shall not be required to list for taxation any share or shares of the capital stock of such corporation, except such proportionate value thereof as the value of the property of such corporation located outside of the State of Ohio bears to the value of the entire property of such corporation. Provided, however, that such exemption shall only apply to the shares of stock specifically set forth on the tax blanks of such stockholders. Provided further, that where all the business of a foreign corporation is transacted in this state, and all of its property situated and taxed in Ohio, the stockholders of such corporation shall not be required to list for taxation any share or shares of the capital stock of such corporation. If any person solicits or transacts within this state, any business for any such foreign corporation, until it shall have complied with all the provisions of this section, he shall be deemed guilty of a misdemeanor, and on conviction, shall be fined not less than ten dollars, nor more than five hundred dollars, or be imprisoned not less than ten days nor more than six months, or both. It shall be the duty of the prosecuting attorney, upon direction of the attorney-general, to prosecute any

person charged with a violation of the provisions of this section.
94 O. L. 225.

Sections 148c and 148d do not strictly belong to this book, but are given as matter of much interest. The acts are discussed in *Tol. Com. Co. v. Glen Mfg. Co.*, 11 C. C. 153; affirmed in 55 Ohio St. 217. See also notes to sec. 3266, and 4 N. P. 167.

The act (148c) is constitutional. *Ætna Iron and Steel Co. v. Taylor*, 13 C. C. 602; *Puerrig v. Carter-Crume Co.*, 16 C. C. 629.

§ 148d. Certificate required of foreign stock corporations—
Requirements before certificate granted —
Designated person upon whom process may be
served ; term of such designation—Revocation
of authority ; service of process—Fee to be
paid at time of such service ; duty of secretary
of state—Fees for issuing certificates—Disposi-
tion of fees—Exemption from process of attach-
ment—Penalty for acting as agent of corpora-
tion failing to comply with act—

That no foreign stock corporation, other than a banking or insurance corporation, or foreign building and loan associations, or foreign co-operative or investment companies, or foreign companies organized to sell certificates or debentures on the installment or partial payment plan, or foreign corporations doing business on the service dividend plan, who have deposited with treasurer of the State of Ohio securities satisfactory to him of the value of not less than twenty-five thousand dollars, and shall annually thereafter deposit securities to the satisfaction of said treasurer equal in value to ten per cent of the gross receipts on the amount of business done in Ohio for the preceding year, until the whole amount so deposited has reached the sum of one hundred thousand dollars, for the protection of the holders of such certificates or debentures, shall do business in this state without first having procured from the secretary of state a certificate that it has complied with all the requirements of law to authorize it to do business in this state, and that the business of the corporation to be carried on in this state is such as can be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business, or if more than one kind of business, by two or more corporations so incorporated for such kinds of business exclusively. The secretary of state shall deliver such certi-

cate to every such corporation so complying with the requirements of the laws of this state. No such foreign stock corporations doing business in this state without such certificate, shall maintain any action in this state upon any contract made by it in this state until it shall have procured such certificate. Before granting such certificate, the secretary of state shall require every such foreign corporation to file in his office a sworn copy of its charter or certificate of incorporation, and a statement under its corporate seal particularly setting forth the amount of capital stock, the business or objects of the corporation which it is engaged in carrying on, or which it proposes to engage in or carry on within the state, and a place within this state which is to be its principal place of business, and designating in the manner prescribed in the code of civil procedure in this state, a person upon whom process against such corporation may be served within this state. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within this state. Such designation shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against such corporation may be served in this state. Any agent so designated by such foreign corporation may, in the name and on behalf of such corporation, bring or prosecute actions in any of the courts of this state in the same manner and with like effect as if done by an officer of such corporation. If the person so designated die or remove from the place where such corporation has its principal place of business within this state, and such corporation does not, within thirty days after such death or removal, designate in like manner another person upon whom process against it may be served within this state, the secretary of state shall revoke the authority of such corporation to do business within this state, and process against such corporation in actions upon any liability incurred within this state before such revocations, may after such death or removal, and before another designation is made, be served upon the secretary [of state]. At the time of such service the plaintiff shall pay to the secretary of state two dollars, to be included in his taxable costs and disbursements, and the secretary of state shall forthwith mail a copy of such notice to such corporation, if its address or the address of any officer thereof is known to him. For each certificate thus issued by the secretary of state he shall be entitled to receive

and shall be paid fees according to the amount of capital stock of each such corporation, as follows:

\$100,000 or less,	\$15 00
More than \$100,000 and not exceeding \$300,000,	20 00
More than \$300,000 and not exceeding \$500,000,	25 00
More than \$500,000 and less than \$1,000,000,	30 00
\$1,000,000 or more,	50 00

Which fees and the several sums of two dollars above named are to be paid by him to treasurer of state to credit of general revenue fund. Provided that such foreign corporations as comply with the provisions of section 148c of the revised statutes, as amended May 16, 1894, shall not be subject to process of attachment under section *fifty-five hundred and twenty-one*, revised statutes, or any law of Ohio, upon the ground, that it is a foreign corporation or non-resident of this state. If any person solicits, or transacts, within this state, any business for any such foreign corporation, until it shall have complied with all the provisions of this section, he shall be deemed guilty of a misdemeanor, and on conviction, shall be fined not less than ten dollars nor more than five hundred dollars, or be imprisoned not less than ten days nor more than six months, or both. It shall be the duty of the prosecuting attorney, upon direction of the attorney general, to prosecute any person charged with a violation of the provisions of this section. 93 v. 227.

See note to section 148c.

FORMS.

According to a late decision of our supreme court (38 Ohio St. 281), corporations in this state are of two general classes, viz.:

1. Those organized for profit.
2. Those organized for purposes other than profit.

In preparing the following forms, the authors found it no small task to determine to which class some organizations ought to belong, and the distinction is so vague that the supreme court has already been asked in several cases to solve the conundrum.

It will not be strange, therefore, if some of the forms here given are not properly classified. If so, it will make little difference, as the forms are all indexed and believed to be sufficient in each case.

The arrangement of the law in the Revised Statutes is not the most obvious, although a vast improvement over the old statutes, where there was no effort at any kind of system. For instance, in the present statutes, there is a chapter headed "Creation of Corporations and General Provisions;" then follow sixteen chapters on certain classes of corporations, such as "Railroads," "Union Depot Companies," etc. After all that is a chapter entitled "Powers of Certain Corporations," with ninety-two sections, defining the "powers" of many corporations not provided for anywhere in the Revised Statutes specifically. It is, however, assumed that such companies now exist as formed under prior statutes, and that they may still be formed under the present laws. Take, for example, section 3827, providing certain regulations for "Boards of Trade" and "Chambers of Commerce," when their creation is not anywhere provided for. In order to understand such cases, reference has been made in the forms to the original statutes, not as authority now, but to show what is necessarily meant by such companies. Where necessary, explanatory notes have been added to this class of forms, which are under the head of "Miscellaneous."

The "Regulations" and "By-laws" are of course only suggestive in a very general sense. It is believed that stockholders

and members of companies having no stock have not hitherto exercised the direct control over corporations to which they are entitled under the laws and which their interests require.

The subject of annual and other meetings of stockholders and members has been carefully considered with the new principle of cumulative voting (pp. 25, 600), through which surprising results are sometimes worked out by enterprising minorities.

The statutes authorize corporations to adopt regulations. Such regulations are not adopted by the directors or trustees, but by the stockholders or members themselves, who are superior to the directors or trustees. The latter may adopt by-laws, but not inconsistent with the regulations. Of course, if there exist no regulations, the by-laws may control the company for all practical purposes.

The forms of mortgage and bonds of corporations, with proceedings authorizing the same, and the petition for dissolution of corporations under the statute, with forms of decrees and entries, are not strictly within the scope of this book; but they are here given for convenience.

Forms for subjecting stockholders to payment of their "second" liability, for pleadings in *quo warranto*, *mandamus*, and other remedies connected with corporations, are contained in works on pleading, and therefore omitted here.

A. T. BREWER,
G. A. LAUBSCHER.

September 20, 1900.

FORMS.

[No. 1.]

Articles of incorporation for a manufacturing company. (Sec. 3236.)

These articles of incorporation of The (Surgical Instrument Manufacturing) Company, Witnesseth, That we the undersigned (*all, or a majority*), of whom are citizens of the State of Ohio, desiring to form a corporation, for profit, under the general corporation laws of said state, do hereby certify:

First. The name of said corporation shall be The (Surgical Instrument Manufacturing) Company.

Second. Said corporation is located at (Cleveland) in (Cuyahoga) county, Ohio, and its principal business there transacted.

Third. Said corporation is formed for the purpose of (manufacturing, purchasing, and dealing in medical and surgical instruments, appliances and supplies, and all things incident thereto).

Fourth. The capital stock of said corporation shall be (fifty thousand) dollars (\$—), divided into (500) shares of (one hundred) dollars (\$—) each.

In witness whereof, we have hereunto set our hands this — day of —, 19—.

JOHN SMITH. WILLIAM JONES,
DAVID BROWN, SAMUEL MILLER,
ROBERT ALLEN.

[No. 2.]

Acknowledgment of articles of incorporation. (Sec. 3236.)

THE STATE OF OHIO, — COUNTY, ss.

Personally appeared before me, the undersigned, a notary public, in and for said county, this — day of —, A. D. 19—, the above named John Smith, William Jones, David Brown, Samuel Miller, and Robert Allen, who each severally acknowledged the signing of the foregoing articles of incorporation to be his free act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal on the day and year last aforesaid.

Notary Public in and for said county.

[No. 3.]

Certificate of clerk of common pleas court, to be attached to articles of incorporation. (Sec. 3238.)

THE STATE OF OHIO, COUNTY OF —, ss.

I, —, clerk of the court of common pleas, within and for the county aforesaid, do hereby certify that — whose name is subscribed to the foregoing acknowledgment, as a —, was at the date thereof a — in and for said county, duly commissioned and qualified, and authorized as such to take said acknowledgment; and further, that I am well acquainted with his handwriting, and believe that the signature to said acknowledgment is genuine.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at —, this — day of —, A. D. 19—. — Clerk.

(585)

[No. 4.]

Certificate by secretary of state, to be attached to copy of articles of incorporation. (Sec. 3238.)

UNITED STATES OF AMERICA, OHIO, OFFICE OF THE SECRETARY OF STATE:

I, —, secretary of state of the State of Ohio, do hereby certify that the foregoing is a true copy of the certificate of incorporation of —, filed in this office on the — day of —, A. D. 19—, and recorded in volume —, page —, of the records of incorporation.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, at Columbus, the — day of —, A. D. 19—.

—, Secretary of State.

[No. 5.]

Articles of incorporation for a corporation not for profit. (Sec. 3236.)

These articles of incorporation of —: Witnesseth, that we, the undersigned, — (*all*, or a *majority*) of whom are citizens of the State of Ohio, desiring to form a corporation not for profit, under the general corporation laws of said state, do hereby certify:

First. The name of said corporation shall be —.

Second. Said corporation shall be located, and its principal business transacted at — in — county, Ohio.

Third. The purpose for which said corporation is formed is —.

In witness whereof, we have hereunto set our hands, this — day of —, A. D. 19—.

FORM OF ACKNOWLEDGMENT.

THE STATE OF OHIO, COUNTY OF —, ss.

On this — day of —, A. D. 19—, personally appeared before me, the undersigned, a — within and for said county, the above named —, who each severally acknowledged the signing of the foregoing articles of incorporation to be his free act and deed, for the uses and purposes herein mentioned.

Witness my hand and official seal on the day and year last aforesaid.

[No. 6.]

Notice of opening books for subscription to capital stock, to be published at least thirty days previously. (Sec. 3242.)

NOTICE OF OPENING BOOKS FOR SUBSCRIPTION TO CAPITAL STOCK OF THE SURGICAL INSTRUMENT MANUFACTURING COMPANY.

Notice is hereby given that books for subscription to the capital stock of said corporation will be opened at the office of —, No. —, — street, Cleveland, O., on Monday, the 15th day of December, A. D. 1900.

JOHN SMITH, WILLIAM JONES,
DAVID BROWN, SAMUEL MILLER,
ROBERT ALLEN,

CLEVELAND, O., November, 5, 1900.

Incorporators.

NOTE.—Above notice may be given by all incorporators or by a majority of them.

[No. 7.]

Waiver of above notice. (Sec. 3242.)

CLEVELAND, O., November 5, 1900.

The incorporators of the Surgical Instrument Manufacturing Company hereby waive giving notice of opening books for subscription to the capital stock of said corporation.

WILLIAM JONES, DAVID BROWN,
SAMUEL MILLER, ROBERT ALLEN,

Incorporators.

NOTE.—This waiver can be made only by *all* the incorporators.

[No. 8.]

Subscription to capital stock. (Sec. 3244.)

CLEVELAND, O., November 5, 1900.

We hereby severally subscribe to the capital stock of The Surgical Instrument Manufacturing Company the number of shares written opposite our respective names, and agree to pay therefor the sum of one hundred dollars per share, payable as follows: 10 per cent cash, upon signing this subscription, and the balance in — installments of \$— each, payable on the — day of — (or in installments, say of 10 per cent, upon call authorized by the board of directors).

JOHN SMITH,	Fifty shares.
WILLIAM JONES,	Fifty shares.
DAVID BROWN,	Fifty shares.
SAMUEL MILLER,	Fifty shares.
ROBERT ALLEN,	Fifty shares.
JOHN ROBINSON.	Twenty shares.
JAMES BLACK,	Thirty shares.

[No. 9.]

Certificate to secretary of state that at least ten per cent is subscribed. (Sec. 3244.)

CLEVELAND, O., October 5, 1900.

To the Honorable Secretary of State, Columbus, O.:

We hereby certify that ten per cent (*or more*) of the capital stock of The Surgical Instrument Manufacturing Company has been subscribed.

JOHN SMITH,	WILLIAM JONES,
DAVID BROWN,	SAMUEL MILLER,
ROBERT ALLEN.	

NOTE.—As stated in the note to Sec. 3244, the above form is sufficient, but as appears by amended section 91 O. L. 304, the incorporators are liable for any deficiency in the 10 per cent. It ought, therefore, to be paid before the certificate is forwarded.

[No. 10.]

General form of proxy to vote at any stockholders' meeting. (Sec. 3245.)

I hereby constitute and appoint John Smith my attorney and proxy, for me and in my name, to vote on all stock held by me in The Ohio Steel Company, on all matters and questions lawfully presented at any stockholders' meeting, as fully as I could do if personally present; and I revoke all former proxies given by me.

In witness whereof, I hereunto set my hand, this — day of —, A. D. 19—, at Dayton, O.

NOTE.—The stockholder may include in the proxy, directions to vote for certain persons for directors, to cumulate votes, and may also direct for whom to vote, in the organization of the stockholders' meeting.

A director as such cannot give a proxy.

[No. 11.]

Proxy for limited purpose. (Sec. 3245.)

I hereby constitute and appoint John Smith my attorney and proxy, for me and in my name, to vote for directors of — on all stock held by me in said company, at a stockholders' meeting, to be held on the — day of —, A. D. 19—, as fully as I could do if personally present; and I revoke all former proxies given by me for said purpose.

In witness whereof, I hereunto set my hand, this — day of —, A. D. 19—, at Cincinnati, O.

[No. 12.]

Notice of holding first stockholders' meeting. (Sec. 3244.)

CLEVELAND, O., November 5, 1900.

Notice is hereby given that the first meeting of stockholders of The Surgical Instrument Manufacturing Company, for the election of directors and such other business as may properly be presented, will be held at the office of —, No. — street, Cleveland, O., on Monday, the 15th day of December, 1900, at 3 o'clock P. M.

WILLIAM JONES,
SAMUEL MILLER,

JOHN SMITH,
DAVID BROWN,
ROBERT ALLEN.

[No. 13.]

Waiver of above notice. (Sec. 3244.)

CLEVELAND, O., November 5, 1900.

The undersigned, being all the subscribers to the capital stock of The Surgical Instrument Manufacturing Company, and this day, at three o'clock P. M., personally, or by proxy, as below set forth, present at the first stockholders' meeting to elect directors for said company hereby waive the giving notice of such meeting provided for by law.

JOHN SMITH,	owning 50 shares.
WILLIAM JONES,	" 50 "
(By JOHN SMITH, his proxy),	
DAVID BROWN,	owning 50 shares.
SAMUEL MILLER,	" 50 "
ROBERT ALLEN,	" 50 "
JNO. ROBINSON,	" 20 "
JAMES BLACK,	" 30 "

[No. 14.]

Minutes of first stockholders' meeting. (Sec. 3245.)

CLEVELAND, O., November 5, 1900.

Pursuant to the following waiver of notice of the time and place of holding a meeting for the purpose of electing directors of The Surgical Instrument Manufacturing Company, to wit: [*copy waiver, with all signatures*], the stockholders of said company met at the office of —, No. — street, Cleveland, O., at — o'clock — M., all the stockholders being present, either personally or by proxy, as follows:

John Smith, owning 50 shares.

William Jones, owning 50 shares (by John Smith, his proxy).

David Brown, owning 50 shares.

Samuel Miller, owning 50 shares.

Robert Allen, owning 50 shares.

John Robinson, owning 20 shares.

James Black, owning 30 shares.

Mr. Brown was chosen chairman, and Mr. Miller, secretary.

On motion of Mr. Black the following regulations were unanimously adopted (see Form of Regulations for suggestions. In ordinary business corporations it is usual to provide by simple resolution for the most important matters, such as quorum, time of meetings, compensation of officers, etc., without adopting formal regulations):

On motion of Mr. Smith, it was resolved that the board of directors of the company consist of five members. An election for directors was then held by ballot, which resulted as follows:

John Smith, William Jones, David Brown, Samuel Miller, and Robert Allen, each received 250 votes; and said persons were then duly declared elected as directors, by John Smith, David Brown, Samuel Miller and Robert Allen, who acted as inspectors of election. Said inspectors then appointed

the first meeting of the directors to be held on this 5th day of November, 1900, at four o'clock, P. M., at No. —, — street, Cleveland, O.

Adjourned.

—, —, Secretary.

—, — Chairman.

NOTE.—The stockholders may cumulate their votes. Sec. 3245. If the stockholders are limited to one vote each, as provided in secs. 3245a and 3245b, the minutes will indicate that each stockholder votes but once, unless the votes are cumulated.

[No. 15.]

Oath of directors and trustees. (Sec. 3247.)

STATE OF OHIO, HAMILTON COUNTY, ss.

Before me personally appeared John Smith, William Jones, David Brown, Samuel Miller, and Robert Allen, directors [or, *trustees*] of —, who being first duly sworn, severally say that they will faithfully discharge their duties as directors [or *trustees*] of said company.

JOHN SMITH,

DAVID BROWN,

WILLIAM JONES,

SAMUEL MILLER,

ROBERT ALLEN.

Sworn to before me and subscribed in my presence by said affiants, this — day of —, A. D. 19—.

WILLIAM JOHNSON,

Notary public in and for said county.

NOTE.—This oath should be copied into the records and the original filed for reference; or the original may be written in the record book.

[No. 16.]

Minutes of first directors' meeting. (Sec. 3247.)

CLEVELAND, OHIO, November 5, 1900.

Pursuant to the notice given by John Smith, David Brown, Samuel Miller, and Robert Allen, inspectors of election at a stockholders' meeting of The Surgical Instrument Manufacturing Company, held November 5, 1900, at three o'clock P. M., the directors of said company met at No. —, — street, in this city at four o'clock P. M., the directors being all present, viz: John Smith, William Jones, David Brown, Samuel Miller, and Robert Allen. An oath faithfully to discharge his duties as director of said company was then taken by each director before William Johnson, notary public.

Mr. Smith was chosen chairman, and Mr. Allen, secretary of the meeting.

On motion of Mr. Allen, it was resolved that the board proceed to elect the officers provided for by the regulations. An election was then held for president, which resulted as follows: Mr. John Smith received five votes, and he was thereupon declared duly elected president. An election was then held for vice-president, which resulted as follows: Mr. Robert Allen received five votes, and was declared duly elected vice-president. An election was then held for secretary and treasurer, which resulted as follows: Mr. William Jones received five votes, and was declared elected secretary and treasurer. An election was then held for general manager, which resulted as follows: Mr. John Robinson received five votes, and was declared duly elected general manager. [If desired, by-laws may be adopted, assessments called in, next meeting appointed, and other business transacted.]

Adjourned.

—, —, Secretary.

—, — Chairman,

HOW TO MAKE THE RECORD.

The record of the organization should be made up substantially as follows:

1. Copy Articles of Incorporation with all certificates attached.
2. Copy notice or waiver of notice for opening books for subscription to capital stock.
3. Copy the stock subscription.
4. Minutes of first stockholders' meeting, incorporating therein the notice or waiver thereof.

5. Certificate to secretary of state that ten per cent has been subscribed, with his authentication and certificate thereto.

6. Minutes of the first directors' meeting, showing the same to be held in accordance with either a written waiver signed by all the directors, or a notice by the inspectors of election given at the first stockholders' meeting, and that they were duly sworn in.

At the first stockholders' meeting the number of directors must be fixed, and regulations may be adopted.

At the first directors' meeting officers of course are elected, and by-laws may be adopted, with other business.

[No. 17.]

Bond for officer.

Know all men by these presents, that William Jones, as principal, and John Smith and Robert Allen, as sureties, are held and firmly bound to —, in the sum of fifty thousand dollars, for the payment of which they severally bind themselves, their heirs, executors and administrators.

The condition of this obligation is such that, whereas, the said William Jones has this day been duly elected secretary and treasurer of —: Now, if the said William Jones, his executors or administrators, shall well and truly pay and account for all funds and property of every kind, belonging to said company, which shall come into his hands, and shall pay and deliver to his successor, or other person duly authorized to receive the same, all moneys and property of every kind in his hands and owned by said company, and shall in every respect honestly and faithfully discharge his duties as such officer, then this obligation shall be null and void, otherwise to be in full force.

This obligation shall remain in force so long as said William Jones continues to hold the office of secretary and treasurer by subsequent election or appointment thereto.

In witness whereof, they hereunto set their hands, at Toledo, Ohio, this — day of —, A. D. 19—.

JOHN SMITH,

WILLIAM JONES,
ROBERT ALLEN.

[No. 18.]

Regulations for a corporation formed for profit. (Secs. 3249, 3252.)

ARTICLE I. *Meetings of stockholders.*

The annual meeting of the stockholders shall be held at the office of the company, in —, on the first Monday in March of each year; and special meetings may be held at such times and places as may be ordered by the board of directors. Notice of such annual and special meetings shall be given to each stockholder appearing as such on the books of the company, by duly mailing the same to his address twenty days prior to the date of such meeting. Three-fourths of all the stockholders shall constitute a quorum.

ART. II. *Election of directors.*

The election of directors shall take place at the annual meeting of stockholders, or at a special meeting called for that purpose, and shall be by ballot; provided, that if such election be not held at an annual or special meeting, it may be held at a stockholders' meeting at which all stockholders are present in person or by proxy. Directors shall be elected for one year, and shall continue in office until their successors are elected and qualified. The number of directors shall be determined by resolution of the stockholders, but shall not be less than five nor more than fifteen.

ART. III. *Election of officers.*

The officers of the company shall be a president, vice-president, secretary and treasurer, and general manager, and they shall be paid such compensa-

tion as the board of directors may determine. Such officers shall be elected for one year, or until their successors are elected and qualified.

ART. IV. *Duties of president and vice-president.*

It shall be the duty of the president to preside at all meetings of stockholders and directors, to sign the records thereof and all certificates of stock, and in general to perform all the duties usually incident to such office, or which may be required by the stockholders or directors.

It shall be the duty of the vice-president to perform all the duties of the president, in case of the latter's absence or disability.

ART. V. *Duties of secretary.*

It shall be the duty of the secretary to keep an accurate record of the acts and proceedings of the stockholders and directors; give all notices required by law and the acts of the stockholders and directors; keep proper books of accounts and books for transfer of stock; issue and attest all certificates of stock; on the expiration of his term of office, deliver all books, papers and property of the company in his hands to the president or his successor; and in general to perform all the duties usually pertaining to the office.

ART. VI. *Duties of treasurer.*

The treasurer shall receive and safely keep all money and choses in action belonging to the company, and disburse the same, under the direction of the board of directors; shall keep accurate account of the finances of the company, in books specially to be provided by him for that purpose, and hold the same open for inspection and examination of the directors and any committee of stockholders appointed for such inspection, and shall present abstracts of the same at the annual meetings of stockholders, or at any other meetings, when requested; shall give bond in such sum and with such security as the board of directors may require for the faithful performance of his duties; and on the expiration of his term shall deliver all money and other property of the company in his hands to his successor or the president. The offices of secretary and treasurer may be held by one and the same person.

ART. VII. *Duties of general manager.*

The duties of the general manager shall be to superintend and control the shops and warehouses of the company and the manufacture and sale of its products, under the direction of the board of directors; to keep accurate accounts of all property passing through his hands, and to do all things incident to such office or required by said board of directors.

ART. VIII. *Regulations amended, etc.*

These regulations may be adopted, repealed, or amended by the assent thereto in writing of two-thirds of the stockholders.

ART. IX. *Transfers.*

Transfers of stock can only be made on the books of the company, in person or by proxy, in the presence of the president or secretary, on surrender of the previous certificate and payment of all dues on the same; provided, that if a certificate be lost or destroyed, a duplicate may be issued by special order of the board of directors, upon satisfactory proof of such loss or destruction, and the giving of a suitable bond of indemnity against loss by reason thereof. The transfer books shall be closed for thirty days next preceding each annual meeting or special meeting of stockholders.

ART. X. *Proxies.*

A stockholder may, through a written proxy, authorize another to vote for him at all stockholders' meetings, but the person so authorized must himself

be a stockholder, and such proxy must be filed with the secretary before the person authorized thereby can vote thereunder.

ART. XI. *Seal.*

The seal of the corporation shall be circular, two inches in diameter, with the name of the corporation engraved around the margin, and the word *seal* engraved across the center.

NOTE.—While it is not necessary to adopt a corporate seal, it is desirable to do so, as delay and annoyance are sometimes caused by objections in other states to corporate deeds, certificates, and other formal documents bearing no seal. For article on "Corporation Signatures and Seals in Ohio," see 38 B. 204.

ART. XII. *Order of business.*

At all stockholders' meetings the order of business shall be as follows:

1. Reading minutes of previous meeting and acting thereon.
2. Reports of directors or committees.
3. Financial report or statement.
4. Reports from president, general manager, or other officers.
5. Unfinished business.
6. Election of directors.
7. New or miscellaneous business.

This order may be changed by affirmative vote of the majority of stockholders present.

ART. XIII. *Executive committee.*

The board of directors may appoint an executive committee of not less than three members from their own number, who shall have charge of the management of the business and affairs of the company in the interim between the meetings of directors, with power to fix prices for the company's products, determine credits, make investments, and generally to discharge the duties of the board of directors, but not to incur debts, excepting for current expenses, unless specially authorized. They shall at all times act under the direction and control of the board of directors, and shall make report to the same of their acts, which shall form part of the records of the company.

[No. 19.]

By-laws of corporation for profit. (Sec. 3250.)

ART. I. *Meeting of directors and quorum.*

The regular meetings of the board of directors shall be held at the office of the company on the first Monday in each month, and special meetings may be held at the call of the president, and he shall call the same on the written request of two directors. At all meetings a majority of the board shall form a quorum.

ART. II. *Qualification of officers.*

All directors and executive officers of the corporation must be holders of at least one share of the capital stock of the company.

ART. III. *Salaries.*

The yearly salaries of the officers of the company are hereby fixed as follows: President, \$—; vice president, \$—; secretary and treasurer, \$—; general superintendent, \$—. Said salaries shall be payable monthly, on the first day of each month.

ART. IV. *Amendments.*

These by-laws may be amended or repealed, or new by-laws adopted, at any regular meeting of directors, by an affirmative vote of two-thirds of all directors of the company.

NOTE.—Ordinarily, business corporations have little need for by-laws, but building and loan, banks, and insurance companies, and other like organizations, imperatively require by-laws. They are, however, too diverse to be even indicated here.

While it may be judicious to have the by-laws provide for two-thirds vote, in order to make any changes, it is questionable whether the directors have power to limit their own authority, section 3250 expressly providing that the directors "may change the same at pleasure." If, as is well established, directors cannot delegate their power, it is safe to conclude they cannot abdicate any part of it.

[No. 20.]

By-laws providing for lien on stock.

The company at all times shall have a lien on its stock to secure all indebtedness of the several stockholders to the company, which lien, when the debt is due, may be enforced by private sale of the stock, owned by the debtor, at the office of the company, after giving the owner at least ten days' notice in writing of the day and hour of sale, and for the purpose of such sale the subscriber for the stock shall be the owner thereof, or, after a certificate has been issued, the person in whose name the stock stands on the books of the company shall be held to be the owner; and if such owner cannot be found, said notice shall be served by leaving a copy thereof at his usual place of residence; and if the residence is unknown, or is not in the State of Ohio, the notice shall be served by publishing the same in a newspaper of general circulation in the county, one time, at least ten days before the sale. If a certificate has been issued representing the stock sold, it shall be rendered void by such sale; and whether such certificate has been issued or not, the purchaser at such sale shall receive a certificate representing the stock by him purchased, and shall have complete title to such stock, acquiring all the rights of the former owner thereof. All certificates of stock shall briefly mention therein the right to the lien above provided for.

This by-law shall not apply where the indebtedness to the company is for unpaid subscriptions to capital stock; but in such cases the statutes of Ohio regulating the enforcement of payment of such indebtedness shall be strictly followed by this company.

NOTE.—Probably the terms of the subscription for stock should give notice of the fact that the stock to be issued will reserve such lien.

[No. 21.]

Regulations for a corporation not for profit. (Secs. 3249-3252.)

ART. I. *Meetings of members.*

The annual meeting of members shall be held at the rooms of the corporation, in Columbus, O., on the first Monday in January in each year. Regular meetings shall also be held at the rooms of the corporation on the first and third Mondays of each month, at 7:30 o'clock P. M. Special meetings may be called by the president upon three days' previous notice, by publication in some newspaper published in Columbus, O. At all meetings a majority of the members shall constitute a quorum.

ART. II. *Election of trustees.*

The election of trustees shall take place at the annual meeting of members, or at a special meeting called for that purpose, and shall be by ballot, and a majority of all votes cast shall be necessary to a choice. The number of trustees shall be five, and they shall be elected for one year, but shall continue in office until their successors are elected and qualified.

NOTE.—The trustees of a corporation not for profit are individually liable for the debts of the corporation by them contracted. Sec. 3261.

ART. III. *Election of officers.*

The officers of the corporation shall be a president, vice-president, secretary and treasurer, and shall serve without compensation. They shall be elected for one year, but serve until their successors are elected and qualified.

ART. IV. Duties of president and vice-president.

It shall be the duty of the president to preside at all meetings of the society, sign the records thereof, and in general to perform all the duties incident to the office. It shall be the duty of the vice-president to perform all the duties of the president during the absence or disability of the latter.

ART. V. Duties of secretary and treasurer.

It shall be the duty of the secretary and treasurer to keep an accurate record of all acts and proceedings of the members and trustees, and of all money received and expended by him; to deliver such records and money to his successor upon the expiration of his term of office, and in general to do all things and acts usually devolving upon such officers.

ART. VI (Sec. 3251). Amendment to regulations.

These regulations may be amended by the assent in writing of two-thirds of the members, or by a majority of the members, at a meeting called for that purpose, as provided in Art. I.

ART. VII. Dues.

All members shall pay an entrance fee of five dollars within ten days after their election, in default of which such election shall be void, and all members shall pay an annual due of two dollars, payable to the treasurer, in advance, on the first day in February of each year, or upon election, and all fractions of a year shall be counted as a full year. Failure to pay annual dues promptly shall be cause for suspension or expulsion.

ART. VIII. Qualifications of members.

Any male person, not less than twenty-five years of age, may become a member upon election by three-fourths of all votes cast, signing the copy of the articles of incorporation, and paying the entrance fee provided for in Art. VII.

ART. IX. Order of business.

At all regular meetings of members the order of business shall be as follows:

1. Roll call.
2. Reading minutes of previous meeting and action thereon.
3. Reports of committees, etc.
4. Financial reports and statements.
5. Reports from president or other officers.
6. Unfinished business.
7. Election of trustees.
8. New or miscellaneous business.

This order may be changed by affirmative vote of the majority of members present.

[No. 22.]

Certificate of stock. (Sec. 3254.)

Number —.]

STATE OF OHIO.

[— Shares.

THE AMERICAN STEEL COMPANY.

Capital stock, \$1,000,000. Shares, \$500 each.

This certifies that John Jones is entitled to twenty-five shares of the capital stock of The American Steel Company, transferable only on the books of said company by the said stockholder, or his representative or attorney, on the surrender of this certificate.

Dated at —, this — day of —, A. D. 19—.

[SEAL OF CORPORATION.]

SAMUEL MILLER, President.
ROBERT ALLEN, Secretary.

Indorsement—assignment:

For value received, — hereby sell, assign, and transfer to — — shares of the stock within mentioned, and authorize the secretary to make the necessary transfer on the books of the company.

Dated at —, this — day of —, A. D. 19—.

JOHN JONES.

[No. 23.]

Certificate of preferred stock. (Sec. 3263.)

Number —.] STATE OF OHIO. [— Shares.

THE ZANESVILLE GAS COMPANY.

Capital stock, \$100,000. Shares \$100.

Preferred stock (increase), \$50,000.

This certifies that John Smith is entitled to and owner of ten shares of the preferred capital stock of the Zanesville Gas Company, on which he is entitled to receive a dividend out of the profits of said company, in preference to the owners of common stock therein.

Transferable only on the books of said company, by the said stockholder or his representative or attorney, on the surrender of this certificate.

Dated at Zanesville, O., this — day of —, A. D. 19—.

SAMUEL MILLER, President.

ROBERT ALLEN, Secretary.

[SEAL OF CORPORATION.]

Same blank assignment as in No. 22.

[No. 24.]

Certificate of increase of capital stock. (Sec. 3263.)

(Preferred.)

The — Company hereby certifies that at a meeting of its directors, held at the office of said company on the — day of —, A. D. 19—, the assent in writing of three-fourths in number of the stockholders, representing more than three fourths of the capital stock of said company, having been first previously obtained, the following resolution was adopted, viz:

“Resolved, That the capital stock of said The — Company be and the same is hereby increased from \$— to \$—, and that [\$—, or, *the whole*] of said increase be issued and disposed of as preferred stock, in — shares of \$— each, and that the purchasers and owners thereof be entitled to receive a dividend on said preferred stock of — per cent per annum, out of the annual profits, in preference to and before any dividend is paid to other stockholders, and that the holders of said preferred stock may, at their election, convert the same into common stock, and the president and secretary are hereby authorized to carry out the provisions of this resolution, and issue certificates of stock to the subscribers thereof.”

In witness whereof, said The — Company has caused its corporate seal to be hereto affixed and its president and secretary to subscribe this certificate this — day of —, A. D. 19—.

THE — COMPANY,

By —, President,

—, Secretary.

[CORPORATE SEAL.]

[No. 25.]

Certificate of stock, reserving lien.

Number —.] STATE OF OHIO. [— Shares.

THE AMERICAN STEEL COMPANY.

Capital stock, \$100,000. Shares, \$500 each.

This certifies that John Brown is entitled to and is owner of ten shares of the capital stock of the American Steel Company, transferable only on the books of said company on the surrender of this certificate; and said company at all times shall have a lien on the stock represented by this certificate for all indebtedness of the owner of such stock to said company, which lien

is enforceable in the manner specified in the by-laws of said company, and the said lien shall not be impaired by any change in the ownership of the said stock.

Dated at Columbus, O., this 1st day of November, A. D. 1900.

SAMUEL MILLER, President.

• [CORPORATE SEAL.]

ROBERT ALLEN, Secretary.

NOTE.—In *Fechheimer v. National Exchange Bank*, 79 Va. 8 (6 Ohio Law Journal, 228), the court held a national bank cannot provide for such a lien as the above form contemplates, under a construction of United States statutes, which are not like Ohio laws.

Ohio corporations may reserve a lien on stock to secure indebtedness of the owner. *Stafford v. Produce Exchange Bank*, 16 C. C. 50.

[No. 26.]

Pledge of stock as collateral security.

\$1,000.]

SPRINGFIELD, O., September 1, 1900.

Ninety days after date, I promise to pay to the order of The Security Bank one thousand dollars, with interest at eight per cent after due. As collateral security for the payment hereof, I hereby pledge to said bank twenty shares of the capital stock of —, evidenced by certificate No. —, possession of which has been given to said bank, hereby giving to said bank, its successors or assigns, full authority to sell all or any of said stock, at or after the maturity of this note, at public or private sale, without notice in any manner, and out of the proceeds to pay all necessary expenses incurred in making such sale, and apply the balance to the payment of this note and accrued interest, the surplus, if any, to be paid to me; and this pledge and power of sale shall apply to any securities hereafter substituted by agreement for said stock; and upon sale of said stock pursuant to this pledge I direct the said corporation to transfer the same on its books to the purchaser or his assigns, such transfer to be as effective as if made by me in person.

SAMUEL MILLER.

[No. 27.]

Another form—Pledge of warehouse receipt.

(Used in *Cleveland, Brown & Co. v. Shoeman*, 40 Ohio St. 176.)

\$600.]

CLEVELAND, O., June 9, 1900.

Forty-five days after date, I promise to pay the First National Bank of Cleveland, or order, six hundred dollars, at First National Bank, for value received, having pledged to the said bank as security (with authority to sell the same on the nonperformance of this promise, in such manner as they in their discretion may deem proper, without notice, either at public or private sale, and to apply the proceeds hereon) Cleveland, Brown & Co.'s warehouse receipt, attached, for 100 barrels flour.

S. F. LESTER.

FORM OF SAID WAREHOUSE RECEIPT.

CLEVELAND, O., June 9, 1900.

Received in the store of S. F. Lester one hundred (100) barrels flour, fifty (50) barrels branded "Franklin," and fifty (50) barrels not branded. Said flour deliverable only to Mr. Lester, or his order, on the surrender of this receipt. Danger of fire excepted.

CLEVELAND, BROWN & CO.

[No. 28.]

Notice of sale of stock for delinquent installment. (Sec. 3253.)

ZANESVILLE, O., December 1, 1900.

Notice is hereby given that, on January 2, 1900, at ten o'clock A. M., the Zanesville Furniture Company will sell at public auction, at its office, ten shares of its capital stock, owned by William Johnson, for nonpayment of an installment of twenty per cent, ordered to be paid on August 1, 1900, by resolution of the board of directors of said company, passed July 1, 1900.

By F. S. BLACK, Secretary.

[No. 29.]

Power of attorney to transfer stock.

Know all men by these presents, that I, John Smith, do hereby constitute and appoint William Jones my agent and attorney, for me and in my name, to sell, assign, and transfer all the stock, being one hundred shares, in The — Company owned by me and standing in my name on the books of said company, hereby authorizing and ratifying all that my said attorney may lawfully do in the premises.

Witness my hand, at Columbus, O., this — day of —, A. D. 1900. — —

[No. 30.]

Increase of capital stock. (Sec. 3262.)

1. Notice of meeting of stockholders to be published at least thirty days before meeting is held:

CLEVELAND, O., October 1, 1900.

Notice is hereby given that at a regular meeting of directors of The American Steel Company, held this day, it was unanimously resolved that a special meeting of stockholders of said company be held at the office of the company on November 10, 1900, at three o'clock P. M., to consider the advisability of increasing the capital stock of said company to \$1,500,000.

ROBERT ALLEN, Secretary.

2. Send similar notice to each stockholder whose place of residence is known, at least thirty days prior to meeting.

3. Waiver of above notices and consent to such increase, signed by all stockholders personally or by proxy:

CLEVELAND, O., October 1, 1900.

The undersigned, being all the stockholders of The American Steel Company, and being either personally or by proxy, as below set forth, this day present at a stockholders' meeting, hereby agree that the capital stock of said company shall be increased from \$1,000,000 to \$1,500,000, and waive notice of the time, place and object of holding such meeting, provided for by law.

JOHN SMITH, number of shares, —.

WILLIAM JONES, " " —.

(By JOHN SMITH, his proxy.)

DAVID BROWN, number of shares, —.

SAMUEL MILLER, " " —.

ROBERT ALLEN, " " —.

JAMES BLACK, " " —.

4. Certificate of such action to be filed with the secretary of state, a formal motion to increase the stock having been carried.

CERTIFICATE OF INCREASE OF CAPITAL STOCK.

—, president, and —, secretary, of The — Company, duly authorized in the premises, and acting on behalf of said company, do hereby certify, that on the — day of —, A. D. 19—, the capital stock of said company was fully subscribed for and ten per cent thereof paid; that on said — day of —, A. D. 19—, by the vote of the holders of the majority of the stock of said company, at a meeting called by a majority of its directors, and held at the office of the company, in the — of —, — county, Ohio [and at which meeting all the holders of the capital stock of said company were present in person or by proxy, and waived in writing the notice by publication and by letter of the time, place and object of such meeting required by law, and also agreed in writing to the increase of capital stock hereinafter set forth, or pursuant to notice duly given according to law], it was, on motion, "Resolved, That the capital stock of said The — Company be increased from \$—, its present capital stock, to \$—, divided into — shares of \$— each; and further, that the president and secretary of

said company be instructed to file a certificate of such increase with the secretary of state, which is done accordingly."

In witness whereof, said president and secretary, acting on behalf of said company, hereunto subscribe said company's name, and affix its corporate seal, this — day of —, A. D. 19—.

THE — COMPANY,

By —, President.

—, Secretary.

[CORPORATE SEAL.]

[No. 31.]

To reduce capital stock. (Sec. 3264.)

1. Written consent to reduction:

CLEVELAND, O., October 1, 1900.

The undersigned, in whose names a majority of the shares of the capital stock of The American Steel Company stand on the books of the company, hereby consent that the capital stock of said company may be reduced from \$1,000,000, its present figure, to \$750,000, and the nominal value of each share from \$500 to \$375, and that the board of directors of said company may take any action necessary to carry such reduction into effect.

JOHN SMITH,	owning	—	shares.
WILLIAM JONES,	"	—	"
DAVID BROWN,	"	—	"
SAMUEL MILLER,	"	—	"
ROBERT ALLEN,	"	—	"
WILLIAM BLACK,	"	—	"
S. S. SHELBY,	"	—	"

2. Form of motion to reduce capital stock:

"*Resolved*, That the capital stock of The American Steel Company, now nominally \$1,000,000, on which \$750,000 have been paid in, be and the same is hereby reduced to \$750,000, divided into the original number of shares, to wit, 2,000, of \$375 each, which are hereby declared fully paid up, and the president and secretary are hereby directed to issue new certificates of stock of the value of \$375 per share, on surrender of the original certificates now outstanding."

3. Certificate of such action to be filed with secretary of state:

To the Hon. Secretary of State, Columbus, O.:

The American Steel Company hereby certifies that at a meeting of directors of said company, held October 1, 1900, the written consent of the persons in whose names a majority of the shares of the capital stock of said company stood on the books of the company having been first obtained, the capital stock of said company was reduced from \$1,000,000 to \$750,000, and the original shares of \$500, on which \$375 had been paid in, were reduced to \$375, fully paid up, and new certificates in accordance therewith, were directed to be issued on surrender of said original certificates.

In witness whereof, The American Steel Company has caused its name to be hereunto subscribed by its president and secretary and its corporate seal to be hereto affixed, this 2d day of October, A. D. 19—.

THE AMERICAN STEEL COMPANY.

By SAMUEL MILLER, President.

ROBERT ALLEN, Secretary.

[CORPORATE SEAL.]

[No. 32.]

Change in number of directors. (Sec. 3267.)

At any meeting called in accordance with the above section, the number of directors may be increased to fifteen, or decreased to five, by a vote of a majority of the stock of the company. The form may be in substance as follows:

The following resolution was offered by Mr. —, seconded by Mr. —, and adopted by a vote of the majority of the stock of this company.

Resolved, That the number of directors of this company be reduced from ten (the present number) to five (or be increased, as the case may be). The vote on said resolution was as follows:

In favor of the resolution:

— owning — shares.
 — owning — shares.
 — owning — shares.
 Total, — shares.

Against the resolution was the following:

— owning — shares.
 — owning — shares.
 — owning — shares.
 Total, — shares.

Total number of votes cast, —; necessary for a choice, —.

The chairman thereupon announced that the resolution was duly adopted.

NOTE.—The resolution should provide, where the vote is for an increase of directors, when the new directors shall be elected and take office, and should also provide some means of designating the outgoing directors and when their terms shall end. When the decrease occurs at the annual meeting, and all terms expire, the delicate question of designating the retiring ones may be avoided.

[No. 33.]

Annual statement. (Sec. 3268.)

Annual statement of the — Company.

Resources:	—, Ohio, —, 19—.
—	Liabilities:
—	—
—	—
—	—

The following is a correct list of the names and residence of the stockholders of this Company, viz:

Name:	Residence:
—	—
—	—
—	— — Treasurer.

[No. 34.]

Annual meetings. (Sec. 3246.)

Office of the — Company.

—, Ohio, —, 19—, — M.

Pursuant to the regulations of this Company, and notice in writing, the stockholders of the company met, at the office of the Company, at — o'clock — M.; the following persons being present (add names of all present): On motion, Mr. — was elected chairman, and Mr. — secretary of the meeting. Messrs. — and — were appointed tellers. It was then ascertained that stock of the company was represented by the persons, and in the amounts following, to-wit:

Names:	Number of shares:
—	—
—	—

(Indicate what stock is represented by proxies, naming the owner of the stock and the proxy.)

The Chairman announced that the first thing in order was the election of — directors for the ensuing year. A vote was then taken, by ballot, which resulted as follows (name the persons voted for, indicating the number of votes for each. If any voters cumulate, have the record show the fact.

The Chairman then announced that — (naming directors receiving majority of stock) were duly elected directors for the ensuing year. They were then duly sworn to discharge their duties as such directors, according to law by —, Notary Public.

— Chairman.
— Secretary.

The meeting then on motion adjourned.

NOTE.—See note to § 3245, in regard to cumulating votes. Important questions frequently arise in the preliminary organization of stockholders' meetings. Before the names of stockholders, and the amount of stock represented by each, is officially ascertained, each person is usually accorded the right to vote, irrespective of stock, so that the majority of persons present control the election of chairman, secretary and tellers. To simplify this matter, the regulations of the company may provide that the president and secretary of the company, respectively, shall be chairman and secretary of the stockholders' meetings. This seems to be legal, under § 3252, paragraph 1.

Ingenious devices have been resorted to, in securing election, where each side holds the same number of shares. In such cases where there are five directors to be elected, each side may choose two by cumulating; the contest is then over the fifth. Success has sometimes been secured by splitting shares into fractions. The validity of this is questionable under § 3245.

An election in a large concern recently, furnishes a good illustration. Five directors to be elected; total number of shares, 5000; each side owned 2500; each cumulated, voting for three, and each was, therefore entitled to 12500 votes (five times the number of shares).

The result was this:

A	received	4167	votes.
B	"	4166	"
C	"	4167	"
		12500	"

A and C were therefore, elected on the one side. The votes on the other side were cast as follows:

D	received	4166 $\frac{2}{3}$	votes.
E	"	4166 $\frac{2}{3}$	"
F	"	4166 $\frac{2}{3}$	"
		12500	"

D, E and F were declared elected. The case was taken into court, and settled without any ruling. Was the election of D, E and F legal?

- (a) Neither had a majority of votes or shares. See 61 Ohio St. 497.
(b) Can the fractions be counted?

[No. 35.]

Resolution by stockholders authorizing a loan, and mortgage securing same. (Sec. 3256.)

Mr. — offered the following resolution in writing, which was seconded by Mr. —, and adopted, to wit:

Resolved, That the president and secretary of this company be authorized to execute and deliver to a trustee the bonds of this company, secured by a mortgage on its real estate for the sum of one hundred thousand dollars, payable ten years after date, and redeemable at any time after five years from date, at the pleasure of the company, with interest at six per cent per annum, payable semi-annually, and that said bonds be sold and the proceeds applied, first, to the payment of a mortgage on the company's real estate, now held by —, on which is now owing the sum of \$50,000, with interest from January 1, 1900; second, to the payment of all other indebtedness of the company, amounting to about \$33,000, and the balance turned over to the company as additional working capital; and that the directors carry into effect the provisions of this resolution, and cause said trustee to be appointed and said bonds and mortgage to be duly executed and delivered.

NOTE.—Ordinarily authority of the stockholders is not essential to a valid mortgage.

[No. 36.]

Resolution by directors to carry out instructions of stockholders in executing mortgage, etc. (Sec. 3256.)

Mr. — offered the following resolution in writing, to wit:

Resolved, That the president and secretary of this company be and they are hereby authorized and directed, in compliance with the resolution of the stockholders of this company, passed at their meeting in —, on —, to execute and deliver to —, as trustee, one hundred bonds of this company,

of \$500 each, payable on January 1, 1900, with interest at the rate of six per cent per annum, payable semi-annually, on the first day of January and July in each year, principal and interest to be paid at the — bank, in the city of —, each bond to have attached thereto twenty interest coupons, the bonds and coupons to be of the form and tenor following, namely:

UNITED STATES OF AMERICA.

STATE OF OHIO.

FIRST MORTGAGE BONDS.

No. —.

\$500.

The American Steel Company, a corporation organized and existing under the laws of the State of Ohio, acknowledges itself indebted to —, trustee, or bearer, in the sum of five hundred dollars, and promises to pay the same on the 1st day of January, 1900, at the — bank, in —, and to pay interest thereon from and after the 1st day of January, 1900, at the rate of six per cent per annum, payable semi-annually, on the 1st days of January and July in each year, at said bank, upon presentation and surrender of the interest coupons hereto attached as they respectively become payable, but reserving the right, at its option, to pay this bond at any time after five years from date.

This bond is one of a series of one hundred bonds, numbered consecutively from number one to number one hundred, both inclusive, all of like date and amount and of the same tenor. The payment of the principal and interest of all said one hundred bonds, without priority or preference among the holders thereof, is secured by first mortgage, bearing even date herewith, made by said corporation to said —, trustee, conveying to him in trust for the equal security of all said one hundred bonds all the real estate and other property of said corporation in —, to which mortgage reference is hereby made; and upon the certificate of said trustee, indorsed hereon, this bond will become secured by said mortgage.

In testimony whereof, the said corporation, The American Steel Company, has caused its corporate seal to be hereto affixed, and this bond to be subscribed by its president and secretary, and the accompanying twenty interest coupons to be authenticated by the lithographed fac-simile of the signature of said secretary, on this — day of —, A. D. 19—.

THE AMERICAN STEEL COMPANY.

By —, President.

—, Secretary.

[CORPORATE SEAL.]

TRUSTER'S CERTIFICATE.

I hereby certify that this bond is one of the series of one hundred first mortgage bonds, and is secured by the mortgage mentioned herein, bearing date the — day of —, A. D. 19—. —, Trustee.

That all of the interest coupons attached to each of said series of one hundred first mortgage bonds, except as to number and time of maturity, shall be in the form following, namely:

INTEREST COUPON.

\$15.] On the — day of —, A. D. 19—, The American Steel Company will pay the bearer, at the — bank, in —, fifteen dollars, being the semi-annual interest that day due on its first mortgage bond, No. —.

—, Secretary.

And that the president and secretary be and they are hereby authorized and directed, in further compliance with said stockholders' resolution, to execute and deliver to said —, as trustee, one hundred second mortgage bonds of this company, of \$500 each, payable on January 1, 1900, with interest at the rate of six per cent per annum, payable semi-annually, on the first days of January and July in each year, principal and interest to be paid at the — bank in the city of —, each bond to have attached thereto twenty interest coupons, the bonds and coupons to be of the form and tenor following, namely:

UNITED STATES OF AMERICA.
STATE OF OHIO.
SECOND MORTGAGE BONDS.

No. —.

\$500.

The American Steel Company, a corporation organized and existing under the laws of the State of Ohio, acknowledges itself indebted to —, trustee, or bearer, in the sum of five hundred dollars, and promises to pay the same on the — day of January, 1900, at the — bank, in —, and to pay interest thereon from and after the 1st day of January, 1900, at the rate of six per cent per annum, payable semi-annually, on the 1st days of January and July in each year, at said bank, upon presentation and surrender of the interest coupons hereto attached as they respectively become payable, but reserving the right, at its option, to pay this bond at any time after five years from date.

This bond is one of a series of one hundred bonds, numbered consecutively from number one to number one hundred, inclusive, all of like date and amount and of the same tenor. The payment of the principal and interest of all said one hundred bonds, without priority or preference among the holders thereof, is secured by mortgage bearing even date herewith, made by said corporation to said —, trustee, conveying to him in trust for the security of said bonds all the real estate and other property of said company in —, which mortgage, so far as it secures this series of one hundred bonds, including this one, is the second lien on all said property and premises, and is subject to the first lien thereon to secure one hundred bonds of five hundred dollars each, made by said corporation, bearing even date herewith, secured by the same mortgage, and denominated "First Mortgage Bonds;" and the lien of said mortgage to secure this bond is inferior and subsequent to the lien thereof as security for said first series of one hundred bonds, which were given to pay off a purchase-money mortgage on said real estate, to which mortgage reference is hereby made, and upon the certificate of said trustee, indorsed hereon, this bond will become secured by said mortgage.

In testimony whereof, the said corporation, The American Steel Company, has caused its corporate seal to be hereto affixed, and this bond to be subscribed by its president and secretary, and the accompanying twenty interest coupons to be authenticated by the lithographed fac-simile of the signature of said secretary, this — day of —, A. D. 1900.

THE AMERICAN STEEL COMPANY.

By —, President,
—, Secretary.

[CORPORATE SEAL.]

TRUSTEE'S CERTIFICATE.

I hereby certify that this bond is one of the series of one hundred second mortgage bonds, and is secured by the mortgage mentioned herein, bearing date the — day of —, A. D. 1900. —, Trustee.

That all of the interest coupons attached to each of said series of one hundred bonds, except as to number and time of maturity, are in the form following, namely:

COUPON.

\$15.] On the 1st day of —, A. D. 19—, The American Steel Company will pay the bearer, at the — bank, in —, fifteen dollars, being the semi-annual interest that day due on its second mortgage bond, No. —.
—, Secretary.

And that said president and secretary also be and they are hereby authorized and directed, in further compliance with the said resolution of the stockholders, to execute and deliver to said —, trustee, a mortgage on all the real estate and other property of this company in —, as security for said bonds, according to the tenor and priority thereof, putting in said

mortgage, among other necessary covenants and agreements, the following provisions, namely:

That said —, trustee, has been and is hereby authorized and directed to sell and negotiate all of said bonds, and out of the proceeds arising from the sale of the said one hundred first mortgage bonds to pay and discharge the mortgage on said real estate, given for balance of purchase money by —, dated the — day of —, A. D. 19—, and recorded in volume —, page —, of the records of — county, on which mortgage there is now owing \$50,000, with interest from January 1, 1900, at six per cent, payable semi-annually; and out of the proceeds of the sale of said one hundred second mortgage bonds, and any balance left from the proceeds of said first mortgage bonds, to pay and satisfy all other debts and liabilities of the company; and, in case of a deficiency to pay all in full, to pay all said debts and obligations *pro rata*. In case the proceeds of said first mortgage bonds shall be inadequate to pay said mortgage debt in full, the deficiency shall be paid first from the proceeds of said second mortgage bonds, said trustee deducting the expenses incident to the negotiation and sale of said bonds, and a reasonable compensation for his services, from the proceeds of each of said series of bonds, before applying the same in liquidation of said mortgage and debts; and said trustee shall pay any balance of proceeds to the treasurer of said company, to be used as additional working capital. In case of foreclosure of this mortgage and sale of said premises, or any part thereof, the proceeds, after paying costs and expenses of such foreclosure, shall be applied, first, to pay the series of first mortgage bonds herein described; and, second, to pay said series of second mortgage bonds. And said American Steel Company agrees to keep all buildings and other combustible property on said premises insured against loss or damage by fire to the extent of at least \$—, in good and solvent insurance companies, satisfactory to said trustee, making the policies payable, in case of loss, to said trustee, and in case of loss all money paid by the insurers shall be used by the trustee in rebuilding or repairing the damage, or, at the option of the company, in paying the above described bonds in the order of their priority; and in case the said insurance is not kept up by said company, the said trustee shall procure the same and have a lien on all said premises for all premiums and expenses paid in connection therewith. And said company also agrees to pay all taxes on said property and premises promptly as the same become due, and not allow any incumbrances for taxes to accrue against said property or any part of it.

[No. 37.]

Mortgage by corporation. (Sec. 3256.)

Know all men by these presents: That The American Steel Company, a corporation organized and existing under the laws of the State of Ohio, the grantor, for the consideration of one hundred thousand dollars, received to its full satisfaction, of —, trustee, the grantee, does give, grant, bargain, sell, and convey unto the said grantee, his heirs and assigns, the following described premises: [*Insert description*], be the same more or less, but subject to all legal highways.

To have and to hold the above granted and bargained property and premises, with the appurtenances thereto belonging, to him, the said grantee, his heirs and assigns, in trust, however, and to and for the uses, intents, and purposes, and on the conditions following, namely:

On November 1, 1900, at a meeting of the stockholders of the said American Steel Company, held in Cleveland, O., and duly called for that purpose, upon lawful notice to all stockholders, more than three-fourths of the stock being represented and voting for the proposition, the following resolution was adopted, viz:

[*Insert resolution of stockholders, heretofore given.*]

And afterward, on December 2, 1900, at a meeting of directors of said

company, duly held at Cleveland, O., pursuant to notice to all directors, more than a quorum being present, it was unanimously resolved as follows, to wit:

[Insert director's resolution, heretofore given, giving the same at length, including all bonds, coupons, etc., and covenants.]

And all of said bonds of both series have been duly certified by the said trustee, as provided herein, and are binding on said company, and said company agrees to pay all of said bonds and interest coupons attached as they mature, according to the tenor thereof.

Now, if the said corporation, The American Steel Company, shall well and truly pay said bonds and coupons according to the tenor thereof, and keep, observe, and perform all the other agreements and obligations in this instrument set forth, then this mortgage shall be null and void, otherwise to be and remain in full force and virtue.

In testimony whereof, the said grantor, The American Steel Company, has caused its corporate seal to be hereto affixed, and these presents to be subscribed by its president and secretary, and the said — trustee, in token of his acceptance of the trusts hereby created, has hereto set his hand, on this — day of —, A. D. 19—.

THE AMERICAN STEEL COMPANY,

By JOHN JONES, President,
WILLIAM BLACK, Secretary.
ROBERT ALLEN, Trustee.

[CORPORATE SEAL.]

Signed, acknowledged, and delivered
in presence of

—,
—.

STATE OF OHIO, CUYAHOGA COUNTY, ss.

I, —, a notary public in and for said county, do hereby certify that John Jones, president of The American Steel Company, and William Black, secretary of said company, whose names respectively are signed to the foregoing instrument, bearing date on the — day of —, A. D. 19—, have this day acknowledged the signing and execution of the said instrument, for themselves respectively and for and on behalf of said The American Steel Company, and acknowledged that they affixed the corporate seal of said company to said instrument, and otherwise executed the same, by direction of a resolution of the directors of said company, and have acknowledged that the same, in all respects, is their free act and deed as such officers respectively, and the free act and deed of said corporation, for the purposes and uses therein set forth. And I further certify that the said John Jones and William Black are known to me to be the individuals and officers described in and who executed said instrument.

In testimony whereof, I hereunto set my hand and official seal, at Cleveland, O., this — day of —, A. D. 19—. —, Notary Public.

NOTE.—Corporation seal is not now necessary to a valid conveyance by an Ohio corporation. East End Building and Loan Co. v. Hughey, 16 C. C. 19.

[No. 38.]

How mortgage bondholders may convert claims into common or preferred stock. (Sec. 3257.)

If desirable the foregoing mortgages and bonds may provide that the indebtedness may be converted into common or preferred stock of the company, under the above section. In order to accomplish this, the resolution of the stockholders (Form 32) should be changed so as to embody the written assent of not less than three-fourths of the stockholders in number, representing at least three-fourths of the paid-up stock, and limiting the amount to one-half of the paid-up stock. The resolution of the directors

should conform to the action of the stockholders. In the bonds should be embodied a clause of the purport following:

The holder of this obligation may convert the indebtedness represented thereby, or any part thereof, into the common stock of this company, at any interest-paying period, upon serving notice, in writing, upon the company of the desire for such conversion.

If the provision is for preferred stock, the clause should so provide.

Action of the directors in adopting the necessary resolutions should be indicated by a "yea" and "nay" vote.

[No. 39.]

Certificate of amendment to articles of incorporation. (Sec. 3238a.)

To the Honorable Secretary of State, Columbus, O.;

The Surgical Instrument Manufacturing Company hereby certifies that at a meeting of its stockholders, held on —, notice of which had been duly given [*or, notice of which had been duly waived*], the following amendment of its articles of incorporation was adopted by a vote of [*or, at least three-fifths*] all its stockholders:

Resolved, That the articles of incorporation of the company be and they are hereby amended by changing the name of said company to "The Surgeon's Supply Company" [*here insert any other amendments authorized*], and that said amendment, as above set forth, is a true copy of the original amendment.

In witness whereof, said company has caused its name and corporate seal [*if any it has*] to be hereto affixed and this certificate to be signed by its president and secretary, this — day of —.

THE SURGICAL INSTRUMENT MANUFACTURING COMPANY,

By —, President,

—, Secretary.

NOTE.—The notices and waivers provided for in section 3238a, may readily be adapted from Form No. 30. See also Form No. 47.

[No. 40.]

Articles of incorporation in which votes of stockholders are limited. (Sec. 3245a.)

THE MECHANICS' FOUNDRY COMPANY.

These articles of incorporation of the Mechanics' Foundry Company, Witnesseth, That we, the undersigned [*all, or a majority*], of whom are citizens of the State of Ohio, desiring to form a corporation for profit, under the general corporation laws of said state, do hereby certify:

1. The name of said corporation shall be "The Mechanics' Foundry Company."

2. Said corporation shall be located, and its principal business transacted, at Sandusky, O.

3. The purpose for which said corporation is to be formed is to carry on a general foundry business for profit.

4. The capital stock of said corporation shall be one hundred thousand dollars, divided into 1,000 shares of \$100 each; but each stockholder, irrespective of the amount of stock he may own, shall be entitled to one vote, and no more, at any election of directors, or upon any subject submitted to a stockholders' meeting.

In witness whereof, they hereunto set their hands, this — day of —, A. D. 19—.

[No. 41.]

General Form under Sec. 3630.*[Follow Form No. 1 to No. 3.]*

3. The purpose for which this corporation is formed, is to transact the business of life and accident insurance on the assessment plan, providing for the mutual protection and relief of its members, and for the payment of stipulated sums of money to the families, heirs, executors, administrators or assigns of deceased members in such manner as is now or may be provided by law.

[No. 42.]

For traveler's and accident companies, under Sec. 3630i.*[Follow Form No. 1 to No. 3.]*

3. The purpose for which this corporation is formed is to insure its members against accidental, personal injuries and loss of life sustained while traveling, and against expense and loss of time occasioned by injuries other than accidental, and by sickness, on such terms as the laws of Ohio provide.

[No. 43.]

Fraternal orders, under Sec. 3631-17.*[Follow Form No. 1 to No. 3.]*

The purpose for which this association is formed, is to create and maintain a lodge system, through which to aid its members in cases of death, sickness, temporary or permanent physical disability, either as the result of disease, accident or old age.

4. The number of trustees to manage said company for the first year, or until the ensuing annual meeting, shall be seven, as follows: *[insert names]*.

NOTE.—This certificate when completed and signed by seven or more must be submitted to and approved by the attorney-general, and recorded in the county in which the home office of the corporation is located, and a copy forwarded to the superintendent of insurance, embracing certified list of officers in charge of the association, with their residences, embodying a list of subscribers, at least 100 in number, showing a deposit at least of \$5,000.00, with other data mentioned in Sec. 3631-17.

Under Sec. 3631-19, meetings of the governing bodies may be held outside of Ohio.

[No. 44.]

Insurance company on the stipulated premium plan. (Sec. 3631-24.)*[Follow Form No. 1 to No. 3.]*

3. The purpose for which this company is formed, is to insure the lives health of its members on the stipulated premium plan, and all things incident thereto, as authorized by the laws of Ohio.

NOTE.—Before beginning business the company must have at least 200 subscribers, and \$500,000 of insurance, and be authorized by the superintendent of insurance to do business.

The company may issue limited payment policies. Sec. 3631-30.

[No. 45.]

Credit guaranty companies. (Sec. 3691-14.)*[Follow Form No. 1 to No. 3.]*

3. The purpose for which this company is formed, is to guaranty and indemnify merchants, manufacturers, traders and others against loss by reason of extending credit to customers and others, and doing all things incident thereto, as authorized by the laws of Ohio, and especially sec. 3691-14 and following. (91 v. 415.)

[No. 46.]

Certificate adding to the objects and purposes of certain corporation. (Sec. 3768.)

The undersigned, being the directors [*or trustees*] of —, a corporation duly existing under the laws of the State of Ohio, hereby add to the objects of said corporation, as provided in its articles of incorporation, dated —, the following objects and purposes, to wit:

[*Insert such as are authorized by section 3767.*]

In witness whereof, they hereunto set their hands respectively, this — day of —.

STATE OF OHIO, — COUNTY, ss.

Before me, a notary public in and for said county, personally appeared the above named —, —, who severally acknowledged the signing of the above certificate, adding to the purposes and objects of said corporation above named, to be their free act and deed as such directors, and the free act and deed of said corporation.

In witness whereof, etc.

[No. 47.]

Certificate accepting the provisions of section 3767 as authorized by section 3768.

The undersigned, being the trustees [*or directors*] of —, a corporation duly organized and existing under the laws of the State of Ohio, for the purpose of [*state original objects*], desiring on behalf of said corporation to accept and adopt the provisions of section 3767, as amended, of the Revised Statutes of Ohio, hereby certify: That said corporation, at a meeting held on —, duly adopted as its permanent organic law the following rules:

[*Here insert such as are authorized by section 3767, of which an outline is given in Form No. 104.*]

Given under our hands, the — day of —.

STATE OF OHIO, — COUNTY, ss.

Before me, a notary public in and for said county, personally appeared the above named —, —, who severally acknowledged the signing of the foregoing certificate to be their free act and deed as trustees of said corporation, and the free act and deed of said corporation.

In witness whereof, etc.

[No. 48.]

Resolution by stockholders authorizing a loan and unsecured bonds therefor. (Sec. 3256.)

Resolved, That the directors be and they are hereby authorized to borrow, for the use and benefit of this corporation, — dollars, and to cause to be duly executed and delivered to the person or persons loaning the same the bonds of this company, payable ten years after date, and redeemable at any time after five years from date, at the pleasure of the company, with interest at six per cent per annum, payable semi-annually; or said directors may, if they consider the same advisable, sell said bonds at a price not less than — per cent of the face value of such bonds; the money so borrowed or realized from the sale of bonds shall be applied as follows: [*set out objects*], and the directors are requested to carry into effect the provisions of this resolution, and cause said bonds to be duly executed and disposed of as aforesaid.

NOTE.—Action by the stockholders as above, though it may be prudent, is not necessary; the directors being invested with full power to borrow money as indicated. The word bond is used instead of note, being more convenient in case coupons are used. The amount of loan should not exceed the capital stock under restrictions imposed by section 3256. Of course, any rate of interest may be named, not exceeding eight per cent. If a trustee is deemed advisable the same may be provided for by suitable terms adapted from Form No. 32.

[No. 49.]

Resolution by directors providing for unsecured bonds, as directed by stockholders.

Resolved, That the president and secretary be and they are hereby authorized and directed, pursuant to the resolution adopted at a stockholders' meeting, held on the — day of —, to execute and deliver, as hereinafter provided, one hundred bonds of this company, for \$100 each, payable on January 1, 1900, with interest at the rate of six per cent per annum, payable semi-annually, on the first days of January and July in each year, principal and interest to be paid at — bank, in Cleveland, O., each bond to have attached thereto twenty interest coupons, the bonds and coupons to be of the form and tenor following, namely:

UNITED STATES OF AMERICA.

STATE OF OHIO.

First Series Coupon Bonds.

No. —.

\$100.

The American Steel Company, a corporation organized and existing under the laws of the State of Ohio, acknowledges itself indebted to the bearer in the sum of one hundred dollars, and promises to pay the same on the 1st day of January, 1900, at the — bank, in Cleveland, Ohio, and to pay interest thereon from and after the 1st day of January, 1900, at the rate of six per cent per annum, payable semi-annually, on the first days of January and July in each year, at said bank, upon presentation and surrender of the interest coupons hereto attached as they respectively become payable; but reserving the right, at its option, to pay this bond at any time after five years from date.

This bond is one of the first series of one hundred bonds, numbered consecutively from number one to number one hundred, both inclusive, all of like date and amount and of the same tenor.

In testimony whereof, the said corporation, the American Steel Company, has caused its corporate seal to be hereto affixed and this bond to be executed by its president and secretary, and the accompanying twenty interest coupons to be authenticated by the signature [*or, by the lithographed facsimile of the signature*] of said secretary on this — day of —, 1900.

THE AMERICAN STEEL COMPANY,

By —, President,
—, Secretary.

[CORPORATE SEAL.]

INTEREST COUPONS.

\$3.00. On the — day of —, 19—, the American Steel Company will pay the bearer at the — bank, in Cleveland, O., three dollars, being the semi-annual interest that day due on its first series coupon bond No. —.

— Secretary.

And said president and secretary are hereby authorized and directed to sell and negotiate said bonds at a price not less than — per cent of the face value thereof.

NOTE.—It is often convenient to use such bonds as collateral, and no objection is perceived to such use, at least for temporary purposes, even without any authority from the stockholders, though if such use is intended it would be prudent to mention it in the stockholders' resolution.

[No. 50.]

**Increase of capital stock of a building and loan association.
(Sec. 3836-3.)****I. RESOLUTION BY DIRECTORS.**

Resolved, That the capital stock of the Delaware Building and Loan Association be increased from \$200,000 to \$300,000, in 500 shares of \$200 each.

2 CERTIFICATE OF SUCH ACTION TO BE FILED WITH THE SECRETARY OF STATE.

To the Honorable Secretary of State, Columbus, Ohio:

The Delaware Building and Loan Association hereby certifies that at a meeting of its directors, held on the — day of —, it was resolved by a majority vote of its said board of directors that the capital stock of said association be increased from \$200,000 to \$300,000, in 500 shares of \$200 each.

In witness whereof, said corporation has caused its corporate seal to be hereto affixed and this certificate to be executed by its president and secretary this — day of —.

THE DELAWARE BUILDING AND LOAN ASSOCIATION,
By —, President,
—, Secretary.

[No. 51.]

Verification by corporation. (Sec. 5102.)

STATE OF OHIO — COUNTY, ss.

John Smith, being first duly sworn, says he is the president [*or other officer, agent, or attorney*] of the above named —, a corporation, and that the facts stated and allegations contained in the foregoing [*pleading*] are true as affiant believes.

JOHN SMITH.

Sworn to and subscribed in my presence by said John Smith, this — day of —.

[No. 52.]

Resolution by directors authorizing an assignment for the benefit of creditors.

It appearing to the directors that this company is unable, from lack of means, to pay all its debts in full and discharge its obligations at maturity, and that a general assignment for the benefit of creditors will serve the best interests of both creditors and stockholders, therefore,

Resolved, That the president and secretary of this company be and they are hereby authorized and directed to make an assignment of all the assets of this corporation to —, in trust, for the equal benefit of all creditors, under the laws of Ohio in such cases made and provided.

[No. 53.]

General assignment by corporation for benefit of creditors.

Know all men by these presents, That the American Steel Company, a corporation organized and existing under the laws of Ohio, for the consideration of one dollar, and the trusts hereinafter named, received to its full satisfaction of —, hereby sells, assigns, grants and conveys to said —, all its lands, tenements, hereditaments, goods, chattels, choses in action, claims, interests and property of every kind and nature; to have and to hold the same unto said —, in trust nevertheless to convert the same into money and dispose of the same for the benefit equally of all creditors of said corporation according to the laws of Ohio relating to insolvents.

In witness whereof said corporation has caused its corporate seal to be hereto affixed, and this instrument to be executed by its president and secretary on this — day of —, 19—, by order of its board of directors duly adopted at a meeting held on the — day of —.

[CORPORATE SEAL.]

THE AMERICAN STEEL COMPANY,
By JOHN SMITH, President,
JAMES BLACK, Secretary.

STATE OF OHIO, CUYAHOGA COUNTY, ss.

Before me personally appeared the American Steel Company, a corporation, by John Smith, its president, and James Black, its secretary, who acknowledged that they did sign and execute the foregoing instrument for

and on behalf of said corporation, and did affix said corporate seal, by virtue of a resolution adopted by the board of directors of said corporation on the — day of —, and acknowledged that the same was the free act and deed of said corporation and of themselves as president and secretary thereof respectively.

In witness whereof, I hereunto set my hand and official seal, this — day of —, —, Notary Public.

ACCEPTANCE OF TRUST BY ASSIGNEE.

I hereby accept the trust conferred by the within instrument, and agree to carry out the provisions thereof. —, Assignee.

NOTE.—Where the corporation has no corporate seal, omit all statements relating to it in the deed and acknowledgment. Where the corporation owns real estate outside of Ohio, it should be described if intended to be assigned.

[No. 54.]

Reorganization of railroads under sections 3393 to 3408, inclusive.

CERTIFICATE TO THE SECRETARY OF STATE (Secs. 3393, 3394, and 3395).

To the Secretary of State of the State of Ohio:

The Ohio River Railroad Company hereby certifies that on and prior to —, 19—, proceedings were pending in the Court of Common Pleas, within and for Franklin county, Ohio, for the sale of the Ohio Railroad and all property of the Ohio Railroad Company, under a mortgage then existing on all of said property, the title of said proceeding being "The National Trust Company against The Ohio Railroad Company and others;" that during the pendency of said action, and on the — day of —, 19—, more than two-thirds ($\frac{2}{3}$) of the stockholders of the said Ohio Railroad Company, and more than two-thirds ($\frac{2}{3}$) in interest of the creditors of said company, agreed in writing upon a plan for the readjusting and capitalization of the debt and stock of the said company, and also appointed — trustees to act in behalf of the parties to said agreement, and the court thereupon rendered judgment against said company as in such cases authorized by law, with an order to sell said railroad and all property belonging to said Ohio Railroad Company. And afterward, on the — day of —, 19—, in accordance with law and by consent of said trustees, said railroad and all other property of the Ohio Railroad Company was sold at public auction and bid in by said trustees in behalf of the said stockholders and creditors who made said agreement, the unsecured debts of the said company incurred for repairs and running expenses having been first fully paid and a copy of said agreement filed in said court before the rendition of said judgment. That said trustees called a meeting of the parties to said agreement immediately after said sale, and on the — day of —, 19—, at — o'clock A. M., at —, which is on the line of said railroad, of which meeting notice for four consecutive weeks was published in the New York Tribune, printed and published in the city of New York, and in the Evening Star, printed and published in the city of Philadelphia, and in a newspaper printed and circulating in each of the counties of [*name counties through which the road runs*], specifying in all said notices the time, place, and object of said meeting; that the parties to said agreement met pursuant to said notice; that under direction of said trustees, who acted as judges of election, and in accordance with said agreement and with the laws of Ohio, the parties to said agreement then voted and decided, by more than a majority in interest of those present, to change the name of the Ohio Railroad Company by inserting the word River after the word Ohio, and then adopted as the name for the reorganized company, the Ohio River Railroad Company, and said meeting, by like votes, also decided then that the capital stock of the said Ohio River Railroad Company for the time being shall be — dollars, divided into — shares of — dollars each, and that the number of directors

of said last named company should be —, of which one-third shall hold office for one year, one-third for two years, and one-third for three years, or until their successors are elected and qualified, and directors were then elected as follows: —, all residing in Ohio, for one year; —, all residing in New York, for two years; and —, all residing in Ohio, for three years; and all said directors were then duly sworn in, and said trustees then perfected in all respects the reorganization of said company in accordance with said agreement and the laws of Ohio; that said directors then elected — president, and — secretary of the reorganized company, the Ohio River Railroad Company; and it is further certified:

1. The name of the reorganized company as adopted is the Ohio River Railroad Company.

2. The said company is to hold, maintain, and operate the Ohio Railroad, with all property of every kind pertaining thereto, which railroad runs from —, in the county of —, to —, in the county of —, passing through the counties of —, in the State of Ohio.

In witness hereof, the corporate name of said company is signed hereto by its president and secretary, by whom the corporate seal of the said company is also hereto affixed, this — day of —, 19—.

THE OHIO RIVER RAILROAD COMPANY,

[SEAL.]

By —, President,
—, Secretary.

NOTE.—It is possible a mere certificate stating what is named in section 3395 would answer without reciting any proceedings, but it is deemed safer to state the facts, at least so far as they are set forth above.

[No. 55.]

Consolidation of railroads. (Secs. 3379-3392.)

THIS AGREEMENT OF CONSOLIDATION, made and entered into this — day of —, A. D. 1900, by and between The Ohio Railway Company, a corporation of the State of Ohio, party of the first part hereto, The Indiana Railway Company, a corporation of the State of Indiana, party of the second part hereto, and The Illinois Railway Company, a corporation of the State of Illinois, party of the third part hereto, witnesseth:

Whereas, the laws of the States of Ohio, Indiana and Illinois provide that a railway company organized for the purpose of constructing, owning and operating a line of railway, or whose line of road is made or in process of construction to the boundary line of the state, may consolidate its capital stock with the capital stock of any company in an adjoining state, organized for a like purpose, and whose line of road has been projected, constructed or in process of construction to the same point where the several lines so united and constructed will form a continuous line for the passage of cars; and shall have the power to intersect, join and unite its railway at such point on the state line, or at any other point that may be mutually agreed upon by said companies; and that said companies may merge and consolidate the capital stock of the respective companies, making one joint stock company of the three railways thus connected upon such terms as may be by them mutually agreed upon, whenever by their charters said companies are authorized to go to said state line, or to such point of intersection, and when the several roads so united will form a continuous line for the passage of cars; and

Whereas, the said party of the first part now has a line of railway made from *[or say, has authority by its charter to build its road from]* —, in the county of —, said State of Ohio, to a point in the county of —, on the state line of Indiana, at or near the — *[town, city or village]* of —, in the county of —, passing into and through the counties of A., B. and C., and *[if the road is in process of construction]* now has its said line in process of construction to said state line; and

Whereas, *[repeat the foregoing preamble as to the party of the second part]*; and,

Whereas, [*repeat the foregoing preamble as to the party of the third part*]; and

Whereas, said points on said state lines thus referred to are common points to which said railways are in process of construction; and,

Whereas, when the said roads shall be so constructed and united they will form a continuous line for the passage of cars; and,

Whereas, for the greater convenience of the public, and for the mutual benefit and advantage of the stockholders of each of said companies, the directors of said companies have proposed, by and with the assent and ratification of the stockholders of each of said companies to be had in due form of law at meetings to be regularly called and for that purpose, to merge, unite and consolidate the capital stock, property and franchises of the said companies into one corporation, and to have a continuous line of railway extending from —, in the State of Ohio, in and through the said State of Indiana, to —, in the county of —, in said State of Illinois;

Now, therefore, the said parties hereto, under and pursuant to the resolutions of their respective boards of directors, and upon the assent of and ratification by the stockholders of said companies, to be had and made as hereinafter set forth, do hereby agree, to and with each other to, and do hereby, merge and consolidate their said capital stock, roads, property and franchises into one company, upon the following terms and conditions, to wit:

[The terms and conditions should contain such covenants and agreements as the parties are able to agree upon; and among other things should include:

(1) *The name of the consolidated company;* (2) *The number of directors, the company's officers, the names and places of residence of the directors of said company who are to hold office until the election therefor provided by law;* (3) *The names of the various officers and their residences;* (4) *The principal office of the consolidated company;* (5) *The amount of the capital stock of the new company, the par value of shares, number of shares of preferred stock and number of common stock;* (6) *The proportions in which the stock shall be issued to the stockholders of the constituent companies;* (7) *Issue of bonds and purposes for which they shall be used;* (8) *Powers of board of directors;* (9) *Conveyance by the constituent companies to the consolidated company of all their property, rights and franchises;* (10) *Transfer to the new company of the books, papers, etc., of the old companies;* (11) *Voting power of stock and bonds;* (12) *Dividends;* (13) *Assumption of debts, liabilities and contracts of old companies;* (14) *Regular annual meeting of the new company;* (15) *Anything else that may be agreed upon.]*

In witness whereof, each of the above named constituent companies, parties hereto, hath caused this instrument to be signed in triplicate by its president, and attested by its secretary, and hath caused its corporate seal to be hereunto affixed, the day and year first above written.

[Here follows the signatures of each of the constituent companies by its president, under the corporate seal, attested by its secretary.]

Attached to this instrument should be a certificate from the secretary of each of the constituent companies, showing the adoption of the agreement by the stockholders of said companies. These certificates should be in substantially the following form:

STATE OF —, COUNTY OF —, ss.

I, A. B., secretary of the — Railway Company, do hereby certify that at a meeting of the stockholders of said company, held at the office of the company in the city of —, state of —, on the — day of —, 19—, due notice of the time and place of holding said meeting and of the business to come before the same, having been given by written notices addressed to each of the persons in whose names the capital stock of said company then stood and now stands, and also by a like notice published in the —, a newspaper published in the city of —, where the said company has its principal office or place of business, at which meeting all the stockholders of said company were present, in person or by proxy, the foregoing agreement of consolidation was submitted for consideration, and a vote by ballot was

taken for the adoption or rejection of the same, and that said agreement was adopted by — shares of the stock of said company being cast in favor of said adoption and — shares being cast in favor of said rejection, the votes cast in favor of the adoption of said agreement being more than two-thirds of the capital stock subscribed of said company.

In witness whereof, I have hereunto set my hand, and affixed the corporate seal of said company, this — day of —, A. D. 19—.

(Signed,) A. B., Secretary of The — Company.

[CORPORATE SEAL.]

NOTE.—Section 3381 provides that the *directors* may enter into the above agreement, and the proceedings should show that the officers are acting under direct authority from the directors, and an attested copy of the resolution of the respective boards might be attached to the agreement as part of it. Or the directors can themselves execute the agreement or certify at the end that the agreement has been made by their express authority. The recitals of law, etc., in the foregoing form are not essential, but they are convenient, and serve to reveal unmistakably the object of the agreement.

FORMS OF ARTICLES OF INCORPORATION FOR PROFIT.

1. FOR MANUFACTURING COMPANIES.
2. FOR INSURANCE COMPANIES.
3. FOR RAILWAY COMPANIES.
4. FOR MISCELLANEOUS COMPANIES.

FORMS FOR MANUFACTURING CORPORATIONS.

[No. 56.]

For a carriage manufactory. (Sec. 3236.)

THE FREMONT CARRIAGE COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of manufacturing, selling, and dealing in carriages, wagons, and vehicles of every description, and material for the same, and doing all things incident thereto.

[Follow Form No. 1 to end.]

[No. 57.]

For a furniture company. (Sec. 3236.)

THE WESTERN FURNITURE COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of manufacturing, selling, and dealing in house, store, and other furniture, and cabinet work of all kinds, and to do all things incident thereto.

[Follow Form No. 1 to end.]

[No. 58.]

For a publishing company. (Sec. 3236.)

THE CINCINNATI PUBLISHING COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of printing, binding, publishing, and dealing in books, newspapers, and other periodicals, and also conducting a general business in binding, job printing, and printers' and stationers' supplies, and doing all things incident thereto.

[Follow Form No. 1 to close.]

[No. 59.]

For a mining company. (Sec. 3236.)**THE OHIO MINING COMPANY.**

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of mining, milling, smelting, and dealing in metals, ores and minerals, and doing a general mining business, and all things incident thereto.

[Follow Form No. 1 to end.]

[No. 60.]

For an electric light and power company. (Sec. 3471a.)

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of manufacturing, selling and furnishing electric light and power in the city of —, Ohio.

[Follow Form No 1 to end.]

FORMS FOR INSURANCE COMPANIES.

[No. 61.]

For life insurance company.

[Not less than thirteen incorporators (Sec. 3587); certificate must embrace a copy of the charter (Sec. 3588).]

THE GARFIELD LIFE INSURANCE COMPANY.

The undersigned [*thirteen names*], citizens of the State of Ohio, hereby declare their intention to form a corporation under the laws of Ohio for insuring the lives of individuals on the stock plan, and for granting, purchasing, and selling annuities, and for all purposes connected with or incident thereto; and they hereby adopt as the charter of said company the regulations and provisions following, to wit:

CHARTER. (Sec. 3588.)

SEC. 1. The name of the company shall be "The Garfield Life Insurance Company."

SEC. 2. Said company shall be located and have its general office at Cincinnati, Hamilton county, Ohio.

SEC. 3. The purpose of said company is to make insurance on the lives of individuals, payable either after the death of the assured or after the lapse of a specified time, on the life or endowment plan. The company shall not be confined to either plan, but may effect insurance on both plans, and may also make insurance upon lives on any other plan not inconsistent with the laws of Ohio, provided all members shall be treated equitably in sharing the benefits and burdens of the company, and the company may also grant, purchase or dispose of annuities.

SEC. 4. The corporate powers of the company shall be exercised by a board of directors, who shall elect a president, vice-president, secretary, and treasurer, as executive officers to manage the affairs of the company, subject to the control of the directors.

SEC. 5. There shall be seven directors, who shall be stockholders of the company, and a majority of them shall be citizens of Ohio. They shall be elected at the annual meeting of the company in each year. The number of directors may be increased to any number, not exceeding twenty-one, by the stockholders. Vacancies in the board of directors may be filled by the directors at any meeting called for that purpose, or, at the written request of any stockholder, the president of the company shall call a meeting of the stockholders, giving them at least ten days' notice in writing, who shall fill the vacancy in the board by an election, and any director elected by the other directors may be superseded by a director elected by the stockholders.

The directors shall make full reports of the business to the stockholders, at least once each year, at the annual meeting, and the books, papers, and records of the company shall at all times be open to the inspection of the stockholders.

SEC. 6. The capital of the company shall consist of five hundred thousand dollars, divided into 5,000 shares of \$100 each, and shall all be subscribed for, taken and paid for, before any policies are issued.

SEC. 7. The annual meeting of the stockholders shall be held at the office of the company, in Cincinnati, Ohio, at 10 o'clock A. M. on the second Tuesday of January in each year after the organization of the company.

SEC. 8. In all elections and votes of the stockholders at their meetings, each share of stock shall count one vote, and a majority of the shares of stock voting at any such meeting shall control the election and determine the result.

In witness whereof, etc. [*End as in general form.*]

NOTE.—Under our statutes, it is now impracticable to organize a purely mutual life insurance company, as \$100,000 is required before any business can be transacted, which cannot conveniently be secured from proposed policy holders. The foregoing form would, however, answer for a mutual company by using the words "mutual plan" instead of "stock plan," and providing the capital by requiring applicants to pay in at least \$100,000 before issuing any policies.

This form may be adapted to accident insurance companies organized under section 3670, which appears to be subject to the general provisions of sections 3587-8.

Forms for organizing life and fire insurance companies must be submitted to and approved by the attorney-general. Secs. 3589 and 3632.

[No. 62.]

For fire insurance company. (Sec. 3632.)

THE DWELLING FIRE INSURANCE COMPANY.

[*Follow Form No. 1 to No. 3.*]

3. The purpose for which said corporation is formed is to insure all kinds of real and personal property against loss or damage by fire or lightning.

[*Follow Form No. 1 to end.*]

NOTE.—Under sec. 3634 such a company must have a capital stock of not less than \$100,000. If it is desirable to organize a mutual company, add in the above form, after the word "lightning," the words "on the mutual plan;" if it is desirable to limit the business to any particular class of risks, such as dwellings, language may be added making the limitation.

[No. 63.]

Guarantee title and trust companies. (Sec. 3641d.)

[*Follow Form No. 1 to 3.*]

3. This corporation is formed for the purpose of guaranteeing the titles to real property, furnishing abstracts for such property, and all things incident thereto, for profit.

[*Follow Form No. 1 to end.*]

[No. 64.]

For a mutual protection association. (Secs. 3687 and 3689.)

The undersigned [*not less than ten*] residents of the State of Ohio, hereby associate themselves to become a body corporate, according to the laws of this state, under the following articles:

1. Said association shall be known as —.

2. The business office of said association shall be at —.

3. The object of said association is to insure its members against loss by fire and lightning, cyclones, tornadoes, or wind storms, and to enforce contracts by them entered into for assessments for the payment of losses to members and incidental expenses.

In witness whereof, they subscribe their names, this — day of —, A. D. 19—.

NOTE.—Sec. 3687 does not mention acknowledgment of articles, but the safer practice would be to comply with secs. 3236 and 3238.

By change in wording of the object, the above form may be used for association for protec-

tion from loss by death of domestic animals and other casualties, such association to be formed by not less than five persons.

The above form may be adapted to companies under sec. 3686, by making two changes; increasing the number of incorporators to ten, and providing if they are not residents of this state that they have property here.

[No. 65.]

Insurance against burglary, robbery, etc. (94 O. L. 350.)

[Follow Form No. 1 to No. 3.]

3. This corporation is formed for the purpose of insuring against loss and damage from burglary and robbery, and attempts thereat, and indemnifying against loss of money and securities in course of transportation.

4. The capital stock of this company shall be \$—, divided into — shares of \$— each.

[Follow Form No. 1 to end.]

FORMS FOR RAILROAD COMPANIES.

[No. 66.]

For railroad company.

THE AIR LINE RAILWAY COMPANY. (Secs. 3236 and 3270 et seq.)

[Follow Form No. 1 to No. 2.]

2. The general office of the company shall be located, and its principal business transacted, at Cincinnati, O.

3. Said corporation is formed for the purpose of building, acquiring, owning, leasing, operating and maintaining a railroad, to be operated by steam or other motive power, having Cincinnati, Ohio, and Cleveland, Ohio, for its termini, and passing in and through the counties of Hamilton, Warren, Green, Clark, Campaign, Union, Delaware, Morrow, Richland, Ashland, Medina, and Cuyahoga.

[Follow Form No. 1 to end.]

[No. 67.]

For a street railway company. (Secs. 3236 and 3437.)

THE CENTRAL STREET RAILROAD COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of building or acquiring, operating, maintaining, leasing and owning a street railroad, with all necessary switches, turnouts, side tracks and double tracks, to be operated by steam, horse or other motive power, for the conveyance of passengers on and through the streets of the city of Cleveland, in the county of Cuyahoga and State of Ohio and the villages of West Cleveland and township of East Cleveland, in said county, beginning at the intersection of Franklin avenue with the westerly limits of West Cleveland village; thence along Franklin avenue to its intersection with Pearl street; thence along Pearl street and the Viaduct to Superior street; thence along Superior street and the Public Square to Euclid avenue; thence along Euclid avenue to Lake View Cemetery, in said township of East Cleveland, with the right to extend the same beyond either terminus.

[Follow general form to end.]

[No. 68.]

For a union depot company. (Sec. 3447.)

THE CLEVELAND UNION DEPOT COMPANY.

The undersigned, John Smith, president of the Union Railway Company, and Frank Brown, president of the Central Railway Company, having been thereto duly authorized and directed by resolutions of the boards of directors of said railway companies respectively, duly passed, hereby associate said

companies to become a body corporate, in accordance with the laws of the State of Ohio, under the following articles:

1. The name of said corporation shall be "The Cleveland Union Depot Company."

2. The names of said companies are The Union Railway Company and The Central Railway Company, and said incorporation is sought for the purpose of purchasing depot grounds and locating, constructing and maintaining a union passenger and freight depot and a union railroad, by two or more tracks connecting the railroads of said companies, for business purposes, for profit.

The amount of capital stock necessary to obtain a site and construct and maintain such depot and tracks is \$500,000.

In witness whereof, they hereunto set their hands and cause the seals of said companies respectively to be hereto affixed this — day of —, A. D. 19—.

THE UNION RAILWAY COMPANY.

[CORPORATE SEAL OF UNION RY. CO.] By JOHN SMITH, President.

THE CENTRAL RAILWAY COMPANY,

[CORPORATE SEAL OF CENTRAL RY. CO.] By FRANK BROWN, President.

NOTE.—From the language of sec. 3447 it seems that such certificate need not be acknowledged, but under the general laws it is safer to add an acknowledgment.

FORMS FOR MISCELLANEOUS CORPORATIONS.

The following forms furnish only the "Purpose" for which companies are formed; the balance of the form being like No. 1.

[No. 69.]

For wrecking company. (Sec. 3882.)

THE RELIEF WRECKING COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for rescuing water crafts and other property from wreck and other peril.

[Follow Form No. 1 to end.]

[No. 70.]

For a storage company or warehouse company. (Sec. 3236.)

THE WESTERN STORAGE COMPANY, OR, THE WESTERN WAREHOUSE COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of establishing and maintaining one or more warehouses for the storage of all kinds of property, obtaining insurance on the same, and making advances when for the interest of the company, and purchasing and dealing in the same if necessary to protect the company from loss, and also leasing lands or other premises, to obtain storage for property which cannot be conveniently stored in a building; and said company will also issue negotiable warehouse receipts for any property in its possession or under its control.

[Follow Form No. 1 to end.]

[No. 71.]

Bond and investment companies under sec. 3821r.

[Follow Form No. 1 to No. 3.]

3. The purpose for which this company is formed is to deal in certificates, bonds debentures, and other investment securities, on the partial payment, installment, and other plans; also to handle and place such obligations, as

agents, upon commission or other compensation, as authorized by the laws of Ohio, and especially by sec. 3821r. 93 v. 401.

[Follow Form No. 1 to end.]

NOTE.—Companies of this class are under the control of the inspector of building and loan associations. See sec. 3831s and following.

[No. 72.]

For hydraulic company. (Sec. 3562.)

THE CHILLICOTHE HYDRAULIC COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of providing and furnishing hydraulic power for manufacturing and other purposes.

[Follow Form No. 1 to end.]

[No. 73.]

For bridge company. (Sec. 3537.)

THE CUYAHOGA TOLL BRIDGE COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of constructing, maintaining and owning a toll bridge over the Cuyahoga river, near Cleveland, O., with the right to take tolls as provided for in sec. 3539 of the Revised Statutes of Ohio.

[Follow Form No. 1 to end.]

[No. 74.]

For sanatorium, surgical and hygienic companies. (Sec. 3235.)

[Follow Form No. 1 to No. 3.]

3. The purpose for which this company is formed is to erect, equip, conduct and maintain sanitoriums for medical, surgical and hygienic treatment of patients, and for instruction of nurses in connection therewith, and all things incident thereto.

[Follow Form No. 1 to end.]

[No. 75.]

For a fishery company. (Sec. 3853.)

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of propagating fish and establishing fisheries.

[Follow Form No. 1 to end.]

[No. 76.]

For a park, pond, or rink company. (Sec. 3868.)

THE WINTER PARK COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of constructing a park, pond, and rink and public hall, for skating and other lawful sports, and for holding fairs, festivals, public meetings, concerts, and other entertainments.

[Follow Form No. 1 to end.]

[No. 77.]

For real estate companies. (Sec. 3235.)

[Follow Form No. 1 to No. 3.]

3. This company is formed for the purpose of buying and selling and dealing in real estate and all things incident thereto.

[Follow Form No. 1 to end.]

[No. 78.]

For company for improving navigable stream. (Sec. 3854.)*[Follow Form No. 1 to No. 3.]*

3. Said corporation is formed for the purpose of improving the navigation of the Tombigbee river, between the town of —, in Allen county, and the town of —, in Wood county. Said stream passes through the county of Allen northerly from said place first named, into and through the county of Hancock and into Wood county, to the point last named.

[Use Form No. 1 to end.]

[No. 79.]

For omnibus company.

THE NEWARK OMNIBUS COMPANY. (Sec. 3236.)

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of furnishing facilities for rapid transit in the city of Newark for passengers and property, by means of carriages, omnibus and other wagons and vehicles, and of owning all property necessary therefor.

[Follow Form No. 1 to end.]

[No. 80.]

For express company. (Sec. 3236.)

THE CONTINENTAL EXPRESS COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of engaging in the business of the safe and speedy carriage, forwarding and delivery of property of all kinds, but especially of money and other valuables, and to do all things incident thereto and hold all property necessary or convenient therefor.

[Follow Form No. 1 to end.]

[No. 81.]

For a hotel company. (Sec. 3336.)

THE COLUMBUS HOTEL COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of providing and managing one or more buildings for the accommodation of guests as a public hotel, and doing all things incident thereto.

[Follow Form No. 1 to end.]

[No. 82.]

For a fertilizing company. (Sec. 3236.)

THE FARMERS' FERTILIZING COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of manufacturing and dealing in materials of all kinds for enriching the soil and increasing its productive capacity.

[Follow Form No. 1 to end.]

[No. 83.]

For crematory companies, under section 3586a.*[Follow Form No. 1 to No. 3.]*

3. The purpose for which this company is formed is to erect, maintain and operate buildings, furnaces and other appropriate apparatus for the purpose of cremating dead bodies, and all things incident thereto.

[Follow Form No. 1 to end.]

[No. 84.]

For avenue company. (Sec 3822.)**THE RIVER AVENUE COMPANY.**

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of constructing avenues in said county of —, and collecting tolls thereon.

[Follow Form No. 1 to end.]

NOTE.—The routes and termini should probably be given, though this does not seem to be indispensable under the statute.

[No. 85.]

For building and loan association. (Sec. 3836-1.)**THE DELAWARE BUILDING AND LOAN ASSOCIATION.**

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of raising money to be loaned among its members and depositors, for use in buying lots, building and repairing houses, and other purposes.

[Follow Form No. 1 to end.]

NOTE.—Under Sec. 3836-2, building and loan companies may begin business when five per cent of the authorized capital is subscribed. Directors may be elected for from one to three years. A building and loan company must provide certain things in its constitution, and certain other things in its by-laws. A careful study of Sec. 3836-3 will be necessary in order to organize lawful building and loan companies, giving them the advantage of collecting dues, fines, premiums, assessments and interest and avoiding usury. The safer plan is to have the stockholders adopt a constitution providing for the exercise of the powers enumerated in Sec. 3836-3, and the directors make the by-laws, providing in every way for the conduct of the business of the company.

These companies, being under the control of the superintendent of insurance, are required to submit their by-laws to him for approval. His office contains by-laws of the 700 companies in the state. It would unduly enlarge the scope of this book to print even samples of by-laws, as a well-organized company has at least fifty sections, and a dozen or more sections of constitution.

Any one desiring to organize a building and loan company will do well to obtain from the inspector of building and loan companies printed by-laws of various companies, adopting such as may be suitable to the particular company to be created.

The by-laws and constitution should cover at least: 1, qualification of members; 2, eligibility and number of directors and officers; 3, bonds of the various officers; 4, respective classes of stock to be issued, how payable; 5, rates of dues, fines, premiums, interest and assessment (usually the dues include premium, interest and what is to be applied out of each installment on the principal); 6, forms of bonds, mortgages, applications for stock and for loans should be carefully composed, submitted to and approved by the board of directors; 7, where the company loans on definite payments, the amount thereof, per hundred dollars, should be specified.

These companies should be conducted strictly in accordance with instructions, and subject to supervision of the department at Columbus. Although the department may be wrong, it is best to follow its instructions, where it is practicable.

Under the war-revenue law of 1898, building and loan companies are exempt from stamp or tax duties on all papers made to or by them, except checks.

[No. 86.]

For co-operative trading company. (Sec. 3837.)**THE PROTECTION TRADING COMPANY.**

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of purchasing in quantity all articles of merchandise, and distributing the same to consumers at the actual cost thereof.

[Follow Form No. 1 to end.]

[No. 87.]

For a common carrier company. (Sec. 3838.)**THE NATIONAL DISPATCH COMPANY.**

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of making and executing

contracts for the carriage of persons, and the storage, forwarding, carriage and delivery of property, and doing all things incident thereto and necessary for the convenient dispatch of its business, and authorized by law.

[Follow Form No. 1 to end.]

NOTE.—If the corporation is to construct any road, add counties and termini, as required by Sec. 3237.

[No. 88.]

For dock company. (Sec. 3840.)

THE OHIO RIVER DOCK COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of constructing and establishing docks in and adjacent to the Ohio river, in Hamilton county, O., and establishing and maintaining thereon suitable structures for their convenient use for manufacturing and commerce.

[Follow Form No. 1 to end.]

[No. 89.]

For elevator company. (Sec. 3841.)

THE TOLEDO GRAIN ELEVATOR COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of carrying on the general business of receiving, storing, delivering, and forwarding grain, produce, and merchandise of all kinds, with the aid of elevators and other appliances and machinery.

[Follow Form No. 1 to end.]

[No. 90.]

For ferry company. (Sec. 3849.)

THE OHIO RIVER FERRY COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of operating a ferry across the Ohio river at or near —, by steam or other motive power, and owning such boats and other vessels, real estate, and structures as may be required conveniently for such business.

[Follow Form No. 1 to end.]

[No. 91.]

For market-house company. (Sec. 3858.)

THE FULTON MARKET COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of constructing and maintaining a market-house at —, for the sale of all articles usually sold in similar institutions, and doing all things incident thereto.

[Follow Form No. 1 to end.]

[No. 92.]

For a sewerage company. (Sec. 3871.)

THE PORTSMOUTH SEWERAGE COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of draining the streets, alleys, lots, commons, wharves, landings, buildings, and grounds of the city of Portsmouth, in this state, by sewers and other devices and improvements.

[Follow Form No. 1 to end.]

[No. 93.]

For stock yard company. (Sec. 3876.)

THE CINCINNATI STOCK YARDS COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of erecting and maintaining pens, buildings, and other structures, for the safe-keeping of live stock intrusted to it on sale or otherwise, and to lease or purchase such real estate as may be necessary for the convenient prosecution of said business.

[Follow Form No. 1 to end.]

[No. 94.]

For transportation company. (Sec. 3877.)

THE LAKE ERIE TRANSPORTATION COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of transporting freight and for towing, on Lake Erie and other lakes, and the navigable rivers connected therewith, and doing all things and holding all property necessary and incidental thereto.

[Follow Form No 1 to end.]

[No. 95.]

For fruit company. (Sec. 3883.)

THE PERFECTION FRUIT COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of cultivating, canning, preserving, shipping, and dealing in fruit of all kinds.

[Follow Form No. 1 to end.]

[No. 96.]

For magnetic telegraph company. (Sec. 3454.)

THE UNITED TELEGRAPH COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of building or acquiring, constructing, renting, maintaining, owning and operating a magnetic telegraph line extending through the counties of Defiance, Henry, Wood, Sandusky, Erie, Lorain, Cuyahoga, Lake and Ashtabula, with the state lines of Indiana and Pennsylvania as its western and eastern termini respectively in Ohio.

[Follow Form No. 1 to end.]

[No. 97.]

For telephone company. (Sec. 3471.)

[Form for telegraph company can readily be adapted to this purpose.]

[No. 98.]

For gas company. (Sec. 3550.)

THE SPRINGFIELD GAS LIGHT AND COKE COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of manufacturing and selling gas for lighting and other purposes, to lay conductors therefor through the streets and alleys of said city, and to sell coke and all other products incidental to such manufacture.

[Follow Form No. 1 to end.]

NOTE.—This form may readily be adapted to natural gas companies under section 3561a.

[No. 99.]

For water company. (Sec. 3550.)

THE MEDINA WATER SUPPLY COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of supplying the town of Medina, Ohio, and the inhabitants thereof, with water for all uses, laying conducting pipes through the streets and alleys of said city, and doing all things requisite for the convenient prosecution of said business.

[Follow Form No. 1 to end.]

[No. 100.]

For turnpike and plank road companies. (Sec. 3472.)

THE WOOSTER AND MASSILLON TURNPIKE COMPANY.

[Follow Form No. 1 to No. 3.]

3. The purpose for which said corporation is formed is, to construct, acquire, lease, maintain and operate a turnpike or plank road, to be constructed either of plank, stone or gravel, with Wooster, Ohio, and Canton, Ohio, as its termini, and passing through the counties of Wayne and Stark, with the right also to improve and hold the road diverging at Moscow and extending thence to Orrville, Ohio.

[Follow Form No. 1 to end.]

[No. 101.]

For abstract company. (Sec. 3236.)

THE LAKE COUNTY ABSTRACT COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of making and furnishing abstracts of title to real estate in said county.

[Follow Form No. 1 to end.]

[No. 102.]

For an opera-house company. (Sec. 3236.)

THE IMPERIAL OPERA HOUSE COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of furnishing facilities for holding musical, theatrical and other entertainments, and constructing, maintaining and owning such buildings and other property as may be convenient therefor.

[Follow Form No. 1 to end.]

[No. 103.]

For transporting petroleum—Pipe line companies. (Sec. 3878 et seq.)

THE NATIONAL PETROLEUM TRANSPORTATION COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of transporting oils and other fluids through tubing and pipes, and for handling and storing the same in tanks or otherwise.

[Follow Form No. 1 to end.]

NOTE.—Under section 3237 the route of the pipe line should probably be given, including termini and counties.

[No. 104.]

For an ice company.

THE CLEAR BROOK ICE COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of furnishing ice for all purposes, and owning such real estate and other property as may be convenient in such business.

[Follow Form No. 1 to end.]

[No. 105.]

For safe deposit and trust company. (Sec. 3821a.)

THE FIDELITY SAFE DEPOSIT AND TRUST COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of receiving for safe-keeping money and other property, and carrying on the general business of a safe deposit and trust company.

[Follow Form No. 1 to end.]

[No. 106.]

For a driving park association.

THE CINCINNATI DRIVING PARK COMPANY.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of maintaining and owning grounds for speeding horses, cultivating the art of driving and riding the same, and giving exhibitions thereof.

[Follow Form No. 1 to end.]

[No. 107.]

For savings and loan association. (Sec. 3797.)

THE SECURITY SAVINGS AND LOAN ASSOCIATION.

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of receiving deposits, loaning money, and conducting all business authorized by law to be conducted by a savings and loan association.

[Follow Form No. 1 to end.]

NOTE.—Such association must have a capital stock of at least \$50,000, in shares of \$100 each, and half of each subscription must be paid. (Sec. 3797.)

Though this is a company for profit, section 3797 implies that its name may end with "association" instead of "company."

[No. 108.]

For a collateral loan company. (Sec. 3821h.)

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of loaning money upon pledges and mortgages of goods and chattels of every kind.

4. The capital stock shall be \$—, divided into — shares of \$50 each.

In witness whereof, they hereunto set their hands, this — day of —, A. D. 19—.

[Signed and acknowledged by not less than seven.]

NOTE.—Such companies are restricted as to location, amount of capital, government, powers, etc., by the statute providing for their creation.

[No. 109.]

For bank under the general laws. (Sec. 3235.)

[Follow Form No. 1 to No. 3.]

3. Said corporation is formed for the purpose of receiving deposits of money and other valuables, discounting bills and notes, dealing in negotia-

ble instruments, and other choses in action, and doing in every respect a general banking business, with all transactions incident thereto.

NOTE.—In *The State v. Stock Company*, 38 Ohio St. 347, it was held that an insurance company could not be organized under section 3235, because such companies were specially provided for elsewhere in the statutes. Logically, though it is believed not necessarily, the same rule may be applied to banks, as they are specially provided for under the old Free Banking Act of 1851, secs. (7625) *et seq.*, S. & B. Ed. of Revised Statutes; secs. (7636), *et seq.*, Giaueue's Ed. of Revised Statutes.

FREE BANKING.

[No. 110.]

For bank under "Free banking" act of 1851. (Sec. 3821-64.)

CERTIFICATE. (Secs. 1 and 2.)

The undersigned [*name the incorporators, at least three*] certify that they hereby associate themselves to form a banking corporation under the act to authorize free banking, passed March 21, 1851, and acts amendatory and supplementary thereto, subject to the following articles:

1. The name of said bank shall be The Traders' Exchange Bank. The place where its banking business is to be carried on is Cleveland, in Cuyahoga county, Ohio.

2. The amount of the capital stock is to be one hundred thousand dollars (\$100,000), divided into two thousand (2000) shares of fifty dollars (\$50) each.

3. The names and places of residence, and the number of shares to be held by each stockholder of the company are as follows:

NAME.	RESIDENCE.	No. SHARES.

4. The said company has been formed this — day of —, 19—.

In witness whereof, they hereunto set their hands and seals this — day of —, 19—.

— — — [SEAL.]
 — — — [SEAL.]
 — — — [SEAL.]

[For acknowledgment use Form No. 2. and the clerk's certificate may be as given in Form No. 3.]

NOTE.—The above certificate, and the certificate from the governor, auditor, and secretary of state, under section 5, form the entire record in the secretary of state's office showing the formation of the bank. Under section 15, a semi-annual report is required to be made to the auditor, which will show its existence and condition.

In forming the bank the incorporators may adopt substantially the course indicated in the following forms:

SUBSCRIPTION TO CAPITAL STOCK.

[Use Form 8, adding the residence of the subscriber, and say fifty dollars per share, instead of one hundred dollars.]

After all the stock is subscribed and paid in, or at least 60 per cent thereof, let the incorporators call a meeting of the subscribers and take the following action:

MINUTES OF FIRST STOCKHOLDER'S MEETING.

Pursuant to notice, the subscribers to the capital stock of The Traders' Exchange Bank all met on —, 19—, at—, for the purpose of organizing said bank. On motion, Mr. — was elected chairman, and Mr. —, secretary. Mr. — and Mr. — acted as tellers. An election for directors was then held, resulting as follows:

Mr. — received — votes.
 Mr. — " — "
 Mr. — " — "

Each share of stock subscribed for counted as one vote, and the total number of votes cast was —.

The stockholders present and voting, with the shares subscribed for by each, were as follows:

NAMES.	RESIDENCES.	SHARES.

The new directors then, with the assent of the subscribers, elected Mr. — president of the bank, and Mr. — cashier.

Mr. — then offered the following resolution, which was adopted unanimously:

"Resolved, that the president, Mr. —, and the cashier, Mr. —, be and they are hereby appointed a committee to represent all of the subscribers to the stock of this bank in perfecting its organization, and they are directed to take a copy of the minutes of this meeting, together with the \$60,000 in money belonging to this bank, or certificates of deposit therefor issued by some responsible bank, showing that the same is the property of this bank, and subject to its order, and go to Columbus, and thereby procure from the governor, auditor and secretary of state the certificate which they are authorized to give, showing the compliance by this bank with the laws of Ohio in such cases made and provided, the certificate of incorporation having already been forwarded to the secretary of state and recorded in said county, as required by said act."

All of said directors are residents of Ohio, and they own more than one-tenth of the capital stock of the bank. Each director was sworn as provided by section 14 of said act, before —, a notary public in and for — county, and the oath subscribed by each director and certified by said notary was, on — day of —, 19—, filed in the recorder's office of the said county of —, in which the said bank is located.

The said cashier was directed to copy into the minute book provided for the use of the bank: first, the certificate of incorporation; second, the certificate from the governor, auditor and secretary of state, followed by the minutes of the first meeting and of all subsequent meetings; all such minutes, when so copied into said book, to be authenticated by the president and cashier.

The cashier was directed to make a complete and plainly-written copy of these minutes, to be authenticated by the chairman and secretary of this meeting, and signed also by all the subscribers to the capital stock, either in person or by proxy, for presentation to the governor, auditor and secretary of state, in order, together with the necessary showing as to payment of said sixty per cent, to procure from said officers the certificate showing compliance with said act.

The meeting then adjourned, the directors to meet at the call of the president.

— —, Chairman.
 — —, Secretary.

The undersigned, subscribers to the capital stock of The Traders' Exchange Bank, including those elected directors of said bank, hereby certify that the foregoing minutes, authenticated by the signatures of the chairman, Mr. —, and the secretary, Mr. —, correctly set forth the action taken by us, and we desire further to authenticate the same by our signatures, setting opposite each of our names the number of shares subscribed by us respectively, and the amount we have paid thereon in good faith; all of which amount, making an aggregate of \$60,000, is now on deposit with the first National Bank of — to the credit of The Traders' Exchange Bank, and subject to its order.

NAMES.	NO. OF SHARES.	AMOUNT PAID.

NOTE.—The foregoing will show to the state officers a full compliance with the law, and will save them all trouble in gathering the information necessary to the discharge of their responsible trust. Upon receipt of their certificate the directors can be summoned, and any other necessary officers appointed, and the bank duly opened.

[No. III.]

For Scrip Certificates.

OFFICE OF THE — COMPANY.
—, 1900.

DIRECTORS' MEETING.

At a meeting of the directors of The — Company, at which all the members of the board were present, it appeared from the report of the treasurer, and other information, that the earnings of the company not divided, amounting to \$—, have been used and invested by the company as working capital and to develop its resources; it also appearing that none of said amount is needed to pay operating debts or obligations of the company.

Upon receipt of this information, Mr. — offered the following preamble and resolution:

"Whereas, the net earnings of this company, amounting to \$— have from time to time been invested in the extension of its business and providing additional facilities for the prosecution of its legitimate enterprises [*here describe the particular business more definitely*], and in that manner a large addition has been made to the value of the property of the company, by withholding from the stockholders moneys which have been fairly earned, and but for the above-mentioned expenditures would have been paid to them, and,

Whereas, upon a fair and just estimate of the property of the company it has been in this manner increased in value over the amount of the present capital stock by at least the said sum of \$— [*put in the sum mentioned in the first paragraph*] and,

Whereas, the stockholders desiring to realize without impairing the property of the company or profits which have been thus invested, and to make them more available:

Now, therefore, it is resolved, that a dividend from the profits of the company thus invested, of \$— for each share of the present capital stock of the company, to be paid pro rata to the holders thereof in scrip, after the form following, which scrip shall entitle the respective holders thereof to all the privileges and advantages declared and expressed therein."

This motion was duly seconded, and after full discussion was unanimously adopted.

Mr. — then presented for adoption a form of scrip certificate contem-

plated by the foregoing preamble and resolution, which form so presented was unanimously adopted by vote, and the same is in the words following, to wit:

"OFFICE OF THE — COMPANY,
—, —, 1900.

No. — of scrip.

No. of shares —.

This is to certify that — and — heirs or assigns will be entitled, upon the surrender of this certificate, to — shares of \$ — each of the capital stock of this company, and until said shares are received by him he is to receive dividends upon this certificate from the earnings of the company pro rata with, and the same as, the owner of the shares of the capital stock of the company. [*Insert any special conditions.*]

"Witness the corporate name of this company, and the signatures of the president and secretary, at —, this — day of —, 1900.

THE — COMPANY,

By —, President,
—, Secretary."

[*Print on the back of the certificate the following:*]

"For value received the undersigned — assigned and transferred unto — all — right and title to the scrip certificates of the — company, and do hereby constitute and appoint — true and lawful attorney for and in — name and behalf to make and execute all necessary acts of assignment, transfer and surrender — required by the terms of said scrip certificates and the regulations and by-laws of that company.

In witness whereof, I have hereunto set — hand and seal this — day of —, 19—.

Sealed and delivered in the presence of:

— —. [Seal.]"

NOTE.—The certificates above provided for are not taxable. 17 C. C. 129; approved by supreme court, 42 B. 262.

Instead of issuing the scrip certificates, the resolution may recite the same facts, and then authorize the president and secretary to issue to the stockholders certificates of stock for a pro rata amount of the earnings. If the stock has all been issued, the capital stock of the company can be increased under the statutes, in the usual way, to such an extent as may be necessary to equal the earnings to be divided.

FORMS OF ARTICLES OF INCORPORATION NOT FOR PROFIT.

1. RELIGIOUS SOCIETIES.
2. SCHOOLS AND OTHER LITERARY SOCIETIES.
3. BENEVOLENT SOCIETIES.
4. SOCIAL CLUBS, ETC.
5. MISCELLANEOUS.

FORMS FOR RELIGIOUS SOCIETIES.

[No. 112.]

For missionary society.

[*Follow Form No. 5 to No. 3.*]

3. The purpose for which said corporation is formed, is to promote the spread and adoption of the Christian religion among all people, and especially in places where it does not now exist.

[*Follow Form No. 5 to end.*]

NOTE.—This may readily be restricted to home or foreign mission work.

[No. 113.]

For a religious society. (Secs. 3772 and 3783.)**FIRST — CHURCH.**

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed, is to provide a place of worship for its members, to be conducted according to the rules and discipline of the — Church; to promote the interest of the Christian religion, and to receive and hold donations and bequests, and funds arising from other sources, for the benefit of said corporation.

[Follow Form No. 5 to end.]

[No. 114.]

For endowment fund corporation. (Secs. 3784-6.)

It is hereby certified that a regular meeting of [*naming presbytery, etc.*], held on the — day of —, at —, the following named persons, to wit: [*not less than five in number*], all of whom are members of said denomination and of whom [*at least*] the first three are resident freeholders of this state, were duly elected trustees for — years, of the funds now on hand, or hereafter acquired, constituting the endowment fund for [*name the purpose, or otherwise designate character of fund*], as authorized by the said [*presbytery, etc.*], and to hold, manage, rent, lease, improve, sell, or otherwise dispose of all real estate belonging to said denomination, subject to the direction of said [*presbytery, etc.*]

In witness whereof, said [*presbytery, etc.*] has caused this certificate to be executed by its [*title of presiding officer*] and its [*title of clerk or secretary*], this — day of —.

— — — [Title.]
— — — [Title.]

STATE OF OHIO, — COUNTY, ss.

Before me, a notary public in and for said county, personally appeared the above named — and —, who each signed the foregoing certificate in my presence, and acknowledged the same to be their free act and deed and the free act and deed of said [*presbytery, etc.*].

In witness whereof, I hereunto set my hand and official seal, this — day of —.

FORMS FOR SCHOOLS AND OTHER LITERARY SOCIETIES.

[No. 115.]

For schools. (Sec. 3726 et seq.)**THE OHIO ADVANCE SCHOOL.**

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is to secure to its members and patrons the advantages of education in all departments of learning and knowledge, especially in the branches usually comprehended in academic and university collegiate courses, though not excluding primary instruction, as furnished in common schools.

[Follow Form No. 5 to end.]

NOTE.—The foregoing form can be readily adapted to law, medicine, dentistry, or other professional or scientific purpose, or may be restricted to common school, seminary, college, or university.

[No. 116.]

Colleges under ecclesiastical patronage. (Sec. 3751b.)

[Add to Form No. 115, after the word "schools," where the institution is to be governed by any particular denomination, the following paragraph:]

This corporation is to be controlled by and to be subject to the rules and regulations of the — denomination.

[No. 117.]

For a literary society. (Sec. 3236.)

THE STUDENTS' LITERARY SOCIETY.

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is to provide reading rooms and material, public discussions and entertainments, and other facilities and opportunities for literary culture and social improvement, for its members.

[Follow Form No. 5 to end.]

[No. 118.]

For law college (Secs. 3236 and 3726 et seq.)

THE COLUMBUS LAW COLLEGE.

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is that of establishing and maintaining in the city of Columbus, O., an institution for instruction in the science and practice of law, and to receive, hold, and apply therefor any funds or property lawfully acquired by said corporation.

[Follow Form No. 5 to end.]

NOTE.—Above form can readily be adapted for other professional schools.

[No. 119.]

For historical society. (Sec. 3236.)

OHIO HISTORICAL ASSOCIATION.

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is collecting and preserving information relating to the history of the State of Ohio, and accumulating such books, papers, documents, and articles of interest as tend to illustrate the same.

[Follow Form No. 5 to end.]

[No. 120.]

For a library association. (Sec. 3236.)

URBANA LIBRARY ASSOCIATION.

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is to acquire and maintain a library of books, periodicals, and other papers and documents, for the encouragement of literature and science, and the culture of the members of the association.

4. Said corporation shall have a capital stock of \$100,000, divided into 50,000 shares of \$2 each, to be used only for defraying the expenses of said library, and buying books and other supplies therefor.

[Follow Form No. 5 to end.]

NOTE.—Annual dues may be provided for in rules and regulations.

[No. 121.]

For academy of fine arts, art gallery, etc. (Sec. 3767.)

[Follow Form No. 5 to No. 3.]

3. The purpose for which this corporation is formed is to receive gifts, devises, and trust funds, and therewith to erect, establish, and maintain an academy for advancing and improving all the arts, processes, and methods of photography, and furnishing instruction therein, by lectures and otherwise [or insert other authorized objects].

4. The management and control of all the corporate means and property, business and franchises, shall be vested in a board of ten trustees, whose term

of office shall be six years, and until their successors are elected by ballot by a majority of the members of the corporation; and all donors of \$100 or more, and all trustees designated in instruments by which property or funds amounting to \$100 or more may be acquired by the corporation in trust, shall be active life members. Unless otherwise directed by the terms of any devise or gift, all money so received shall be invested in interest bearing bonds of the United States, or notes or bonds secured by first mortgage on real estate, and only the income thereof shall be expended in prosecuting the work of the corporation, until the total annual income shall be \$—, after which any money or property subsequently acquired may be applied to the expenses of the corporation, in the discretion of the board of trustees.

In witness whereof, etc.

[Follow Form No. 5 to end.]

NOTE.—See 85 O. L. 278, for special act as to Cincinnati Orphan Asylum.

FORMS FOR BENEVOLENT SOCIETIES.

[No. 122.]

For a children's home.

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is to provide a home and education for destitute children and fit them for lives of usefulness; and to acquire, by donation or otherwise, all necessary property and funds.

[Follow Form No. 5 to end.]

NOTE.—The above form can readily be adapted to orphan asylums and other charitable institutions. Such home may also be organized by county commissioners under sections 923 and 929.

[No. 123.]

For benevolent society.

THE GARFIELD LODGE, NO. 1, KNIGHTS OF —.

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is to promote friendship, charity and benevolence, and to assist its members in sickness or distress, and aid the families of deceased members, by voluntary contributions, under regulations and by-laws to be adopted.

[Follow Form No. 5 to end.]

NOTE.—This form may be adapted to all secret orders and societies, but is not intended for mutual relief associations agreeing to pay stipulated sums on death; such corporations must be organized under section 3630.

[No. 124.]

Home for aged women. (Sec. 3881.)

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is to establish a home for aged and indigent women, under such conditions as may be prescribed by the board of trustees, and to acquire, through donations and otherwise, and own funds and property convenient therefor.

[Follow Form No. 5 to end.]

[No. 125.]

For society for the prevention of cruelty to animals. (Secs. 3715 to 3718.)

THE SANDUSKY HUMANE SOCIETY.

The undersigned hereby certifies that the following is a true record of the proceedings of a meeting held at Sandusky, O., on November 1, 1900:

SANDUSKY, O., November 1, 1900.

Messrs. — [7 names], being present, it was unanimously resolved, on

motion of Mr. —, that all present form and organize a society, to become incorporated under the laws of Ohio, and to be known as The Sandusky Humane Society, for the prevention of acts of cruelty to animals. On motion of Mr. —, it was thereupon resolved to elect three directors, and Messrs. —, —, —, were duly elected as such directors. On motion of Mr. —, Mr. — was elected secretary of the meeting, and requested to prepare rules and regulations, to be submitted at the next meeting, providing for honorary memberships, dues, and all other matters necessary for the successful prosecution of the work of the society, and also do all things necessary to procure the incorporation of the society. On Mr. —'s motion, Mr. — was appointed the active agent of the society. The meeting was thereupon adjourned to meet at the call of the secretary.

—, Secretary.

[No. 126.]

For firemen's relief association. (Sec. 3850.)

FIREMEN'S RELIEF ASSOCIATION.

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is affording relief to members of fire, hose, and hook and ladder companies, disabled or injured while in the discharge of duty, and to their families.

[Follow Form No. 5 to end.]

[No. 127.]

Farmers' institute societies. (Sec. 3713-1.)

[Follow Form No. 5 to No. 3.]

3. This society is formed for the purpose of teaching better methods of farming, stock-raising, fruit-culture, and all branches of business connected with the industry of agriculture.

[Follow Form No. 5 to end.]

NOTE.—There must be at least twenty incorporators.

[No. 128.]

For farm laborers' associations. (Sec. 3843 et seq.)

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is to promote the interests of agriculture, and for the relief of distressed farm laborers and their widows and orphans, whether such widows and orphans be members of any such association or not, and for any other charitable purpose.

[Follow Form No. 5 to end.]

NOTE.—The original statute (74 O. L. 204), required ten or more incorporators, but five is enough under the present law.

[No. 129.]

For a county or district agricultural society. (Secs. 3697 and 3700 et seq.)

The undersigned, being residents of — county [*or, of a district embracing two counties*], hereby organize themselves into a society, for the improvement of agriculture within said county [*or, district*], subject to the rules and regulations furnished by the State Board of Agriculture, and in accordance with the laws of Ohio governing corporations so organized for the purpose above named.

Said society shall be known as —, and shall be located at —.

In witness whereof, they hereunto set their hands, this — day of —, 1900.

[Signed by thirty or more.]

NOTE.—Although the statute does not expressly require such organization to be in writing, nor that such instrument be acknowledged or sent to the secretary of state, it is suggested that such usual course be pursued.

The State Board of Agriculture, at Columbus, furnishes, without charge, upon application, printed rules and by-laws.

[No. 130.]

For a township agricultural society. (Sec. 3709.)

The undersigned, being residents of the township of —, county of —, Ohio, hereby form a society to become incorporated under the laws of said state and the following agreement, viz.:

1. That the name of such incorporated society shall be —.
 2. Its object shall not be profit, but the promotion of agriculture in said township.
 3. Said corporation shall be located in said township of —.
- In witness whereof, they hereunto set their hands and seals, this — day of —, 1900.

_____	[SEAL.]
_____	[SEAL.]
_____	[SEAL.]
_____	[SEAL.]
_____	[SEAL.]

NOTE.—The number required to form such a corporation should probably be not less than five, as provided in section 3236. The seals would appear to be no longer necessary (81 O. L. 198, § 4). This certificate can be acknowledged only before a justice of the peace.

The above form can be readily adapted to a society for detection of horse thieves, etc., under section 3709a.

FORMS FOR SOCIAL CLUBS.

[No. 131.]

For a social club. (Sec. 3236.)**WINTER SOCIAL CLUB.**

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is to provide social entertainments and other means of recreation and amusement for its members.

[Follow Form No. 5 to end.]

[No. 132.]

For a bowling club. (Sec. 3236.)

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is to provide means and facilities for exercise in bowling and other athletic sports, for the recreation and improvement in health of its members.

[Follow Form No. 5 to end.]

[No. 133.]

For a vocal or music society. (Sec. 3236.)**LAKE ERIE SAENGERBUND.**

[Follow Form No. 1 to No. 3.]

3. The purpose for which said corporation is formed is to promote the study and rendition of music, to organize and maintain a school for instruction and cultivation in vocal and instrumental music, and to acquire and hold funds and property convenient therefor.

[Follow Form No. 5 to end.]

[No. 134.]

For a shooting club. (Sec. 3236.)**THE FOREST SHOOTING CLUB.**

[Follow Form No. 5 to No. 3.]

3. The purpose for which said corporation is formed is to acquire and own grounds for the use of its members for hunting and fishing, or otherwise to

provide facilities for such sport, and to encourage and assist in the proper observance of the game laws of the state.

[*Follow Form No 5 to end.*]

FORMS FOR MISCELLANEOUS SOCIETIES.

[No. 135.]

For preserving dead bodies. (Sec. 3884.)

[*Follow Form No. 5 to No. 3.*]

3. The purpose for which said corporation is formed is that of preserving and protecting bodies of deceased persons before burial.

[*Follow Form No. 5 to end.*]

[No. 136.]

For a cemetery association. (Sec. 3571.)

EVERGREEN CEMETERY ASSOCIATION.

[*Follow Form No. 5 to No. 3.*]

3. The purpose for which said association is formed is to acquire by purchase or otherwise, and hold, lands to be used exclusively for burial purposes.

[*Follow Form No. 5 to end.*]

[No. 137.]

For a pharmaceutical association.

THE OHIO STATE PHARMACEUTICAL ASSOCIATION.

Following is the purpose as expressed in the above entitled society's articles of incorporation:

"The object of the association shall be to unite the reputable pharmacists and druggists of the state; to improve the science and art of pharmacy; to elevate its standard; and to eventually restrict the practice of pharmacy to properly qualified pharmacists and druggists."

[No. 138.]

For board of trade. (Sec. 3827 et seq.)

[*Follow Form No. 5 to No. 3.*]

3. The purpose for which said corporation is formed is to promote integrity and good faith, just and equitable principles of business, to discover and correct abuses, to establish and maintain uniformity in commercial usages, to acquire, preserve and disseminate valuable business statistics and information, to prevent or adjust controversies and misunderstandings which may arise between persons engaged in trade, and generally to foster, protect and advance the commercial, mercantile and manufacturing interests of the city.

[*Follow Form No. 5 to end.*]

NOTE.—The act of April 3, 1866 (S. & S. 182), required twenty incorporators, and section 3827 assumes a membership of at least thirteen, so that it is prudent to have twenty incorporators, although five is probably all the law now requires.

As the by-laws of boards of trade in all large cities are printed, and can be procured by applying for them, it is thought unnecessary to take up space by printing them in this book.

[No. 139.]

**For principal organization over subordinate organizations.
(Sec. 3236, § 5.)**

GRAND LODGE OF —.

The undersigned [*name all, five at least being required*], who are all residents of the State of Ohio, and who are associated, not for profit, as the principal and ruling organization over the subordinate lodges of —, located in said state, and associated not for profit, hereby make application to become incorporated for the purpose of being such ruling organization, under the laws of Ohio, with the following articles:

1. The name of said incorporation shall be —.
2. The place where the principal business of said corporation is to be transacted at the time of its incorporation, is Cleveland, Ohio, and the names and places of residence of its principal officers are as follows, respectively:
 —, President, resides in —.
 —, Secretary, resides in —.
 —, Treasurer, resides in —.

In witness whereof, they hereunto set their hands respectively, this — day of —.

[*Acknowledge as in Form No. 2.*]

FORMS FOR DISSOLUTION.

1. PETITION.
2. ORDER.
3. DECREE.

[No. 140.]

Petition for dissolution of corporation. (Sec. 5651.)

IN THE COURT OF COMMON PLEAS, } ss.
 FRANKLIN COUNTY, OHIO.

IN THE MATTER OF APPLICATION OF THE EXCELSIOR KNITTING CO. FOR
 DISSOLUTION.

The undersigned, A., B., C., and D., respectfully state that they are a majority of the directors of the above-named company, duly qualified and acting as such; that said company is a corporation under the laws of Ohio, having a capital stock of \$100,000, divided into 1,000 shares of \$100 each; that said company was organized for the purpose of manufacturing and dealing in knit goods, and has been and is now engaged in such business for profit; that the business has paid no dividends, and there is no prospect of any profits or advantage from further effort in the same; that the company owes debts, which are due, exceeding the sum of \$75,000, and is unable to pay the same because of losses and depreciations and other circumstances hostile to the business; that the undersigned deem it beneficial to the interests of the stockholders that said corporation be dissolved.

They further say:

1. That a full, just, and true inventory of all the assets of said company is hereto attached, marked Exhibit "A," and made part hereof;
2. That a full, just, and true account of the capital stock of said company, with the names and residences of the stockholders, the number of shares owned by each, and the amount paid and unpaid on the same, as hereto attached, marked Exhibit "B," and made part hereof;

3. That a statement of all the incumbrances on the property of said company, and of all engagements entered into by it which have not been fulfilled, specifying the residence of each creditor, and the amount owing to each creditor, giving the consideration for the claims and nature thereof; and all other debts and liabilities of said company, accompanied with a full explanation of each, is hereto attached, marked Exhibit "C," and made part hereof.

Wherefore, the petitioners pray that such proceedings may be had herein as are contemplated by law in such cases, and that said corporation may be dissolved by decree of this court, and that said corporation, its creditors and stockholders, may have such other and further relief in the premises as their interests in law or equity may require.

By —, Plaintiffs' Attorney.

[No. 141.]

STATE OF OHIO, FRANKLIN COUNTY, ss. (Sec. 5653.)

A., B., C., and D., each being duly sworn, severally say that all the facts stated and allegations contained in their foregoing petition and in the several accounts, inventories, and statements annexed thereto, are just and true, so far as they respectively have the means of knowing.

A.,
B.,
C.,
D.

Sworn to before me and subscribed in my presence by said A., B., C., and D., respectively, this — day of —, —, Notary Public.

NOTE.—Sec. 5673 provides for dissolution on application of ONE-FIFTH of the stockholders. The above form can readily be adapted to such an application, adding the facts required by the section to make a case.

[No. 142.]

Order. (Secs. 5654, 5655.)

On filing such petition, the following order may be made:

[Give title of cause as in form of petition.]

And now came the petitioners in this matter, A., B., C., and D., and the court being fully advised in the premises, find that their application for the dissolution of the said Excelsior Knitting Company is in due form. It is therefore ordered by the court that A. B. be and he is hereby appointed referee herein, and all persons interested in said corporation are hereby required to show cause, if any they have, why said corporation should not be dissolved, before said referee, at his office, No. —, in Columbus, O., on the — day of — [not less than three months after the order is made], and said A. B. is ordered to proceed, on said day and subsequent days to which said hearing may be continued, to hear the allegations and proofs of such parties, administer oaths, take testimony in relation thereto if necessary, and with all convenient speed report the same to the court, with a statement of the property, effects, debts, credits, and engagements of the said corporation, and of all other matters and things pertaining to its affairs.

[No. 143.]

Decree of dissolution and appointing receiver. (Secs. 5656, 5657.)

[Give title of cause.]

And now came the petitioners in this matter, A., B., C. and D., and it appearing to the court that the said A. B., referee, has filed his report, as heretofore ordered, as such referee, of the condition of said corporation, the court find from such report and the pleadings, exhibits and testimony herein, that the said The Excelsior Knitting Company is insolvent [or, that a dissolution of the said The Excelsior Knitting Company will be beneficial

to the stockholders thereof, and not injurious to the public interests; or, that the objects of the said company have wholly failed or been entirely abandoned; or, that it is impracticable to accomplish such object], it is therefore ordered, adjudged and decreed that said corporation be and the same is hereby dissolved, and that A. and B. be and they are hereby appointed receivers of the estate and effects of said corporation, to administer its affairs for the interest of all concerned according to the statutes in such cases made and provided, and the further orders of this court in the premises, and that said A. and B., as such receivers, before entering upon their duties, give a bond to the State of Ohio in the sum of — dollars, conditioned for the faithful discharge of their duties and the accounting for all money and property received by them; and it is further ordered that said referee be and he is hereby discharged from all further services herein.

A.,
B.,
C.,
D.

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